

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SOUTH MIAMI GAS CO., INC. and
HOLDCOM, INC.,

Plaintiffs,

vs.

ARKLA ENERGY RESOURCES,

Defendant.

ENTERED ON DOCKET

DATE JUL 20 1994

Case No. 93-C-783-K ✓

FILED

JUL 16 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

O R D E R

Now before the Court is the Motion for Partial Summary Judgment (Docket #5) of the Defendant Arkla Energy Resources (AER).

Undisputed Facts

South Miami Gas Co., Inc. (South Miami) and Holdcom, Inc. (Holdcom) bring this action claiming numerous breaches of a Gas Purchase Contract between South Miami and AER. Among other things, Plaintiffs claim that AER breached the contract by failing to maintain pipeline pressure at less than 600 pounds per square inch. The Contract provides:

Buyer shall have the right to require that the gas be delivered hereunder at any pressure from time to time up to the Contract Pressure.

Contract Pressure is defined as:

[T]hat pressure at the Point of Delivery necessary to deliver the volumes to be received under the Quantities Section hereof . . . not to exceed 600 pounds per square inch gauge pressure at the Point of Delivery.

AER requests summary judgment on the claim for failure to maintain pipeline pressure, arguing that it had no contractual obligation to maintain pipeline pressure at less than 600 pounds per square inch.

Legal Analysis

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Windon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

"The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

Under Oklahoma law, "The express language of a contract controls if it is unambiguous on its face and there exists no fraud, accident, or pure absurdity." Devine v. Ladd Petroleum Corp., 743 F.2d 745, 748 (10th Cir. 1984); Okla.Stat. Ann. tit. 15, §154 (1993).

A reasonable construction is preferred to one which is unreasonable, and where the language is contradictory, obscure, or ambiguous, and susceptible of two constructions, it will be interpreted in a fair and rational sense, rather than in a manner which would make

the contract unusual, inequitable, or such that reasonable men would be unlikely to enter into.

Mortgage Clearing Corp. v. Baugham Lumber Co., 435 P. 2d 135, 139 (Okla. 1967). With these principles in mind, it must be noted that the Contract, on its face, contains no requirement that AER maintain its line pressure at any specific pressure, be it greater or lesser than Contract Pressure.

Plaintiffs argue, however, that unless an implied obligation is read into the Contract, certain provisions of a Settlement Agreement between the parties, which modified the obligations under the Contract, would be nullified. The Settlement Agreement provided that AER was obligated to release 50% of the "Daily Deliverability" as defined by the Gas Purchase Contract. The Contract Defined "Daily Deliverability" as:

[T]he average daily rate at which the well can lawfully deliver gas under the conditions of this Contract as determined by a 5-day test, against buyer's normal operating pressure, not to exceed 600 psig, and including the effects of compression, if any.

However, this provision clearly does not contain any requirement that pipeline pressure be consistently maintained at less than 600 psig. Interpreting the contract pursuant to the rules of contract construction, it is clear that Defendant has no obligation to maintain any particular line pressure, and summary judgment is therefore granted on this claim.

IT IS SO ORDERED THIS 15th DAY OF JULY, 1994.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CAPITALCORP FUNDING, INC., an
Oklahoma corporation, and REGENT
FINANCE CORPORATION, an
Oklahoma corporation,

Plaintiffs,

vs.

CAPITALCORP FINANCIAL, INC., a
Texas corporation and HEPTAGON
INVESTMENTS, LTD, a British
Virgin Islands corporation,

Defendants.

FILED

JUL 20 1994

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

Case No. 94-C-616-B

JUL 20 1994

NOTICE OF DISMISSAL

CapitalCorp Funding, Inc. and Regent Finance Corporation, Plaintiffs herein, hereby
dismiss this lawsuit, without prejudice, pursuant to F.R.C.P. 41(a)(1). This case is being
dismissed before service by the Defendants of an answer or motion for summary judgment.

Respectfully submitted,



Ronald E. Goins, OBA No. 3430
Ellen E. Gallagher, OBA No. 14717
TOMLINS & GOINS
A Professional Corporation
21 Centre Park
2642 East 21st Street, Suite 230
Tulsa, Oklahoma 74114
(918) 747-6500

Attorneys for the Plaintiffs,
CapitalCorp Funding, Inc. and Regent
Finance Corporation

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

W. DEWAIN LILLARD aka WAYMON D.
LILLARD aka WAYMON DEWAIN
LILLARD; SUSAN Y. LILLARD aka
SUSAN D. LILLARD aka SUSAN
DOUGLAS LILLARD; STATE OF
OKLAHOMA ex rel. OKLAHOMA TAX
COMMISSION; CITY OF GLENPOOL,
Oklahoma; COUNTY TREASURER,
Tulsa County, Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

FILED

9

Richard M. [unclear]
U. S. DISTRICT COURT

ENTERED FOR [unclear]

DATE JUL 20 1994

CIVIL ACTION NO. 94-C 467B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 19 day
of July, 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Neal B. Kirkpatrick, Assistant United States
Attorney; the Defendants, **County Treasurer, Tulsa County,**
Oklahoma, and **Board of County Commissioners, Tulsa County,**
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; the Defendant, **State of**
Oklahoma ex rel Oklahoma Tax Commission, appears not, having
previously filed its Disclaimer; and the Defendants, **W. Dewain**
Lillard aka Waymon D. Lillard aka Waymon Dewain Lillard and Susan
Y. Lillard aka Susan D. Lillard aka Susan Douglas Lillard and
City of Glenpool, Oklahoma, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendants, W. Dewain Lillard aka Waymon D. Lillard aka Waymon Dewain Lillard and Susan Y. Lillard aka Susan D. Lillard aka Susan Douglas Lillard, waived Service of Summons on May 25, 1994; and that the Defendant, City of Glenpool, Oklahoma, was Served with Summons and Complaint on May 9, 1994.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answer on May 23, 1994; that the Defendant, State of Oklahoma, ex rel Oklahoma Tax Commission, filed its Disclaimer on May 31, 1994; and that the Defendants, W. Dewain Lillard aka Waymon D. Lillard aka Waymon Dewain Lillard, Susan Y. Lillard aka Susan D. Lillard aka Susan Douglas Lillard, and City of Glenpool, Oklahoma, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Twenty-Six (26), Block Four (4), Rolling Meadows, An Addition to the Town of Glenpool, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on September 4, 1985, the Defendants, W. Dewain Lillard aka Waymon D. Lillard aka Waymon Dewain Lillard and Susan Y. Lillard aka Susan D. Lillard aka

Susan Douglas Lillard, executed and delivered to MORTGAGE CLEARING CORPORATION their mortgage note in the amount of \$48,933.00, payable in monthly installments, with interest thereon at the rate of eleven percent (11%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, W. Dewain Lillard aka Waymon D. Lillard aka Waymon Dewain Lillard and Susan Y. Lillard aka Susan D. Lillard aka Susan Douglas Lillard executed and delivered to MORTGAGE CLEARING CORPORATION a mortgage dated September 4, 1985, covering the above-described property. Said mortgage was recorded on September 9, 1985, in Book 4891 , Page 106, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 23, 1988, Mortgage Clearing Corporation assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development, its successors and assigns. This Assignment of Mortgage was recorded on November 28, 1988, in Book 5142, Page 617, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 1, 1988, the Defendants, W. Dewain Lillard aka Waymon D. Lillard aka Waymon Dewain Lillard and Susan Y. Lillard aka Susan D. Lillard aka Susan Douglas Lillard, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on February 1, 1989, September 6, 1989, and October 1, 1990 .

The Court further finds that the Defendants, W. Dewain Lillard aka Waymon D. Lillard aka Waymon Dewain Lillard and Susan Y. Lillard aka Susan D. Lillard aka Susan Douglas Lillard, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, **W. Dewain Lillard aka Waymon D. Lillard aka Waymon Dewain Lillard and Susan Y. Lillard aka Susan D. Lillard aka Susan Douglas Lillard**, are indebted to the Plaintiff in the principal sum of \$75,060.59, plus interest at the rate of 11 percent per annum from April 1, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendants, **County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma**, claim no right, title or interest in the subject real property

The Court further finds that the Defendants, **W. Dewain Lillard aka Waymon D. Lillard aka Waymon Dewain Lillard, Susan Y. Lillard aka Susan D. Lillard aka Susan Douglas Lillard, and City of Glenpool, Oklahoma**, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendant, **State of Oklahoma ex rel Oklahoma Tax Commission**, disclaims any right, title or interest in the subject property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendants, **W. Dewain Lillard aka Waymon D. Lillard aka Waymon Dewain Lillard and Susan Y. Lillard aka Susan D. Lillard aka Susan Douglas Lillard**, in the principal sum of \$75,060.59, plus interest at the rate of 11 percent per annum from April 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5.31 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, **W. Dewain Lillard aka Waymon D. Lillard aka Waymon Dewain Lillard, Susan Y. Lillard aka Susan D. Lillard aka Susan Douglas Lillard, City of Glenpool, Oklahoma, State of Oklahoma ex rel Oklahoma Tax Commission, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma**, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, **W. Dewain Lillard aka Waymon D.**

Lillard aka Waymon Dewain Lillard and Susan Y. Lillard aka Susan D. Lillard aka Susan Douglas Lillard, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the


Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. DRIE

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


NEAL B. KIRKPATRICK
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

Judgment of Foreclosure
Civil Action No. 94-C 467B

NBK:lg

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

**MILTON EDWARDS and
WILLIAM THOMAS LAWRENCE, JR,**

Plaintiff,

V.S.

DAVID E. O'MEILIN,

Defendant.

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
1980

Case No. 94-C 411 B

341 20 1907

ORDER

COMES NOW the above styled and captioned matter for hearing on this 19 day of July ¹⁹⁹⁴ on a motion, by David C. Phillips, III to dismiss the above styled and captioned case without prejudice. The Court having reviewed said motion and considering the premises finds that there is just cause to dismiss the above styled and captioned case without prejudice.

IT IS THEREFORE ORDERED that the above styled and captioned case for good cause be dismissed this 19 day of July, 1994.

S/ THOMAS R. BRETT
JUDGE OF THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOE D. MARSHALL,

Plaintiff,

vs.

TOWN OF MOUNDS, OKLAHOMA; THE
BOARD OF TRUSTEES OF THE TOWN OF
MOUNDS, OKLAHOMA; CHARLIE MARTIN,
individually and in his official
capacity as Mayor of the Town of
Mounds, Oklahoma; JERALD
WEATHERFORD, individually and in
his official capacity as Trustee
for the Town of Mounds, Oklahoma;
WAYNE RAMEY, individually and in
his official capacity as Trustee
for the Town of Mounds, Oklahoma;
and MARIO LICCIARDELLO,
individually and in his
official capacity as Police
Commissioner of the Town of
Mounds, Oklahoma,

Defendants.

FILED

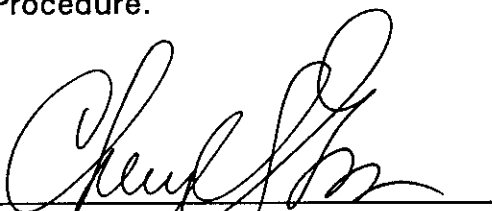
JUL 19 1994

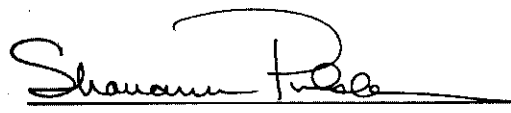
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 94-C-252-K

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

COME NOW the parties to this action and stipulate to the dismissal of the
above-styled cause, pursuant to Rule 41a(1)(ii) of the Federal Rules of Civil
Procedure.


Cheryl S. Gan, OBA 14719
John L. Harlan, OBA 3861
Attorneys for Plaintiff


John H. Lieber
Shannon Pinkham
Attorneys for Defendants

ENTERED ON DOCKET
DATE 7-20-94

CERTIFICATE OF MAILING

I, CHERYL S. GAN, do hereby certify that on the 19th day of July, 1994, I mailed a true and correct copy of the above and foregoing instrument to John H. Lieber, 2727 East 21st Street, Suite 200, Midway Building, Tulsa, Oklahoma 74114 by regular mail with proper postage thereon fully prepaid.


Cheryl S. Gan

DATE _____

F I T D

JUL 19 1994

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

No. 93-C-153-E ✓

Pursuant to the Findings of Fact and Conclusions of Law entered by this Court on the 12th day of July, 1994, JUDGMENT shall be entered AGAINST THE PLAINTIFF AND FOR THE DEFENDANT. Plaintiff shall take nothing from this action. Case DISMISSED.

ORDERED this 19th day of July, 1994.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 7-20-94

) CASE NO. 93-C-833-E

ENTERED ON DOCKET

DATE

7-19-94

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PW/GEODYNE PRODUCTION
PARTNERSHIP II-A; PW/GEODYNE
PRODUCTION PARTNERSHIP II-B;
and PW/GEODYNE PRODUCTION
PARTNERSHIP II-C, General
Partnerships; and GEODYNE
PRODUCTION COMPANY, a
Corporation,

Plaintiffs,

vs.

STATEX PETROLEUM, INC., a
Corporation; and SONORA
SOUTHWEST PARTNERS, a Limited
Partnership,

Defendants.

FILED

JUL 18 1994

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

Case No. 93-C-167

B

DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiffs, PW/Geodyne Production Partnership II-A, PW/Geodyne Production Partnership II-B, PW/Geodyne Production Partnership II-C, and Geodyne Production Company, and hereby dismiss with prejudice the within action in its entirety.

Respectfully submitted,

By:



Jack A. Canon (OBA #1464)
Rand Phipps (OBA #12050)
Michael G. Daniel (OBA #13265)
Samson Plaza
Two West Second Street
Tulsa, Oklahoma 74103
(918) 583-1791
ATTORNEYS FOR THE PLAINTIFFS
PW/GEODYNE PRODUCTION PARTNERSHIP
II-A, PW/GEODYNE PRODUCTION
PARTNERSHIP II-B, PW/GEODYNE
PRODUCTION PARTNERSHIP II-C, and
GEODYNE PRODUCTION COMPANY

Certificate of Service

I hereby certify that on the 15 day of July, 1994, a true and correct copy of the above and foregoing instrument was mailed, postage fully prepaid, to the following parties:

Mr. Dhar Carman
Executive Vice President
Statex Petroleum, Inc.
1801 Royal Lane, Suite 110
Dallas, Texas 75229



Michael G. Daniel

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

F

CHARLES M. RUTHERFORD aka
CHARLES MICHAEL RUTHERFORD;
COUNTY TREASURER, Tulsa County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.) CIVIL ACTION NO. 94-C 362E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 19 day
of July, 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Neal B. Kirkpatrick, Assistant United States
Attorney; the Defendants, **County Treasurer, Tulsa County,**
Oklahoma, and **Board of County Commissioners, Tulsa County,**
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendant, **Charles M.**
Rutherford aka Charles Michael Rutherford, appears not, but makes
default.

The Court being fully advised and having examined the
court file finds that the Defendant, **Charles M. Rutherford aka**
Charles Michael Rutherford, was served with process on May 24,
1994; that Defendant, **County Treasurer, Tulsa County, Oklahoma,**
acknowledged receipt of Summons and Complaint on April 15, 1994;
and that Defendant, **Board of County Commissioners, Tulsa County,**

ENTERED ON DOCKET

DATE _____

Oklahoma, acknowledged receipt of Summons and Complaint on April 14, 1994.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answer on April 29, 1994; and that the Defendant, Charles M. Rutherford aka Charles Michael Rutherford, has failed to answer and his default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Six (6), Block Nine (9), SMITHDALE, an Addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on December 12, 1978, the Defendant, Charles M. Rutherford aka Charles Michael Rutherford, and DeAnna Lee Rutherford, executed and delivered to MIDLAND MORTGAGE CO. their mortgage note in the amount of \$21,500.00, payable in monthly installments, with interest thereon at the rate of nine and one-half percent (9.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Charles M. Rutherford aka Charles Michael Rutherford, and DeAnna Lee Rutherford, then husband and wife, executed and delivered to MIDLAND MORTGAGE CO. a mortgage dated December 12, 1978, covering the above-described property. Said mortgage was recorded on

December 20, 1978, in Book 4372, Page 1763, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 11, 1990, Midland Mortgage Co. assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on June 28, 1990, in Book 5261, Page 2343, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Charles M. Rutherford aka Charles Michael Rutherford, and DeAnna Lee Rutherford, were granted a divorce decree, dated March 14, 1986, in Tulsa County District Court, Case Number FD-86-893, and since that time, Defendant, Charles M. Rutherford, has remained a single person.

The Court further finds that the Defendant, Charles M. Rutherford aka Charles Michael Rutherford, currently holds the fee simple title to the property by virtue of a Divorce Decree dated March 14, 1986, and recorded on August 25, 1986, in Book 4965, Page 427, in the records of Tulsa County, Oklahoma.

The Court further finds that on January 1, 1990, the Defendant, Charles M. Rutherford aka Charles Michael Rutherford, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. A superseding agreement was reached between these same parties on June 1, 1991.

The Court further finds that the Defendant, Charles M. Rutherford aka Charles Michael Rutherford, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, **Charles M. Rutherford aka Charles Michael Rutherford**, is indebted to the Plaintiff in the principal sum of \$30,221.20, plus interest at the rate of 9.5 percent per annum from March 29, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, plus the costs of this action.

The Court further finds that the Defendant, **County Treasurer, Tulsa County, Oklahoma**, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$10.00 which became a lien on the property as of June 25, 1993; a lien in the amount of \$9.00, which became a lien as of June 25, 1993; and a claim against the subject property in the amount of \$9.00 for the tax year 1993. Said liens and claim are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, **Board of County Commissioners, Tulsa County, Oklahoma**, claims no right, title or interest in the subject real property

The Court further finds that the Defendant, **Charles M. Rutherford aka Charles Michael Rutherford**, is in default, and has no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment in rem against the Defendant, **Charles M. Rutherford aka Charles Michael Rutherford**, in the principal sum of \$30,221.20, plus interest at the rate of 9.5 percent per annum from March 29, 1994 until judgment, plus interest thereafter at the current legal rate of 5.31 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **County Treasurer, Tulsa County, Oklahoma**, have and recover judgment in the amount of \$28.00 for personal property taxes for the years 1991-1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, **Charles M. Rutherford aka Charles Michael Rutherford and Board of County Commissioners, Tulsa County, Oklahoma**, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, **Charles M. Rutherford aka Charles**

Michael Rutherford, to satisfy the in rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;


Third:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$28.00, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.


UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


NEAL B. KIRKPATRICK
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 94-C 362E

NBK:lg

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 15 1994

LORI MCKENZIE,

Plaintiff,

vs.

RENBURG'S, INC., and ROBERT L.
RENBURG,

Defendants.

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 92-C-398-B

ENTERED CLERK
JUL 14 1994
DATE

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This case was tried to a jury on June 22, 23, 27, 28 and 29, 1994, regarding Plaintiff's alleged Fair Labor Standards Act (FLSA), 29 U.S.C. § 215(a)(3) employment claim for retaliatory termination. The Defendants moved for a judgment as a matter of law pursuant to Fed.R.Civ.P. 50 at the conclusion of the Plaintiff's evidence and at the conclusion of all of the evidence, which was overruled. The matter was submitted to a jury and the jury by its verdict awarded Plaintiff back pay of \$100,000.00, emotional distress of \$175,000.00, and punitive damages of \$50,000.00, following a trifurcated (liability, compensatory damages, and punitive damages) trial. Entry of judgment by the Court was deferred pending further briefing of authorities relative to damages permitted under 29 U.S.C. § 216(b) and § 260 for such a violation of 29 U.S.C. § 215(a)(3). The Court, having determined damages under 29 U.S.C. § 216(b) are limited to back pay, liquidated damages, and front pay plus costs and reasonable attorneys fees, enters the following Findings of Fact and

claw

Conclusions of Law regarding liquidated damages, front pay, costs and attorneys fees pursuant to Fed.R.Civ.P. 52:¹

FINDINGS OF FACT

1. Plaintiff, Lori G. McKenzie (McKenzie), was employed by Defendant, Renberg's, Inc., men's and women's clothing stores in Tulsa, Oklahoma, from July 1984 to September 20, 1991. Plaintiff had served as personnel director for approximately six years. Plaintiff had no higher education, special training, or experience concerning employment as a director of personnel or human resources apart from her work experience at Renberg's, Inc.

2. While at Renberg's Plaintiff was an employee-at-will.

3. Plaintiff's employment with Renberg's was terminated by involuntary discharge on September 20, 1991.

4. The Defendants, Renberg's, Inc. and Robert L. Renberg, President and Chief Operating Officer, stated the reasons for discharging Plaintiff were that Robert L. Renberg and other Renberg's, Inc. officials had lost confidence in Plaintiff's ability to function as personnel director because of breaches of confidentiality and due to Plaintiff's role in notarizing a *quid pro quo* employment contract (Plaintiff's Ex. 19, Defendants' Ex. 1) relating to intimate sexual activity and a Christmas bonus, entered into by a company officer and an on-call employee at Renberg's, Inc.

5. The Court finds Plaintiff was aware of the contents of

¹See the Court's Order filed contemporaneously herewith.

the contract (Plaintiff's Ex. 19, Defendant's Ex. 1) at the time it was notarized by her in September 1989. The relevant terms of the "binding contract" between David R. Childers (Renberg's store manager) and Brenda Jagels (on-call employee) notarized by Plaintiff are:

"AREA OF CONTENTION: Renberg's Christmas Bonus

TERMS OF THE AGREEMENT: Should Christmas bonuses not be paid in their usual manner to the employees of Renberg's, Inc., a company operating in Tulsa, Oklahoma, then David Childers will provide Brenda Jagels with the following:

- (1) Fendi Parfum 1/4 oz
- (1) Fendi EDT
- (1) Fendi Body Lotion or Creme
- (1) Erno Laszlo Eye Creme

However, should Christmas bonuses be paid then Brenda Jagels will provide David Childers with a very special and provocatively intimate evening; time, place and duration to be negotiated.

PAYMENT: Made on or before December 25, 1989."

6. Plaintiff filed suit against Renberg's, Inc. and Robert L. Renberg on May 8, 1992. Plaintiff alleged that her termination was in retaliation for reporting to Renberg's management possible violations of the FLSA concerning overtime due nonexempt management designated and commissioned sales employees. 29 U.S.C. § 215(a)(3).

7. The jury found that the Plaintiff was willfully and intentionally retaliated against and terminated by Defendants on September 20, 1991, because she had communicated good faith concerns regarding possible FLSA violations by Renberg's, Inc. The jury concluded Defendants' proffered reasons for Plaintiff's

termination were pretextual.²

8. Concerning back pay, the Plaintiff's relevant evidence established a gross loss to Plaintiff from September 20, 1991 to June 20, 1994, as follows:³

September 20, 1991 to December 31, 1991	\$ 8,750.00
January 1, 1992 to December 31, 1992	35,000.00
January 1, 1993 to December 31, 1993	31,500.00 ⁴
January 1, 1994 to June 20, 1994	<u>14,438.00</u>
TOTAL	\$89,688.00

Uncontroverted deductions to be subtracted from the total of \$89,688.00, are for earnings received by Plaintiff in the following years and amounts: 1991 - 0; 1992 - \$2,714.00; 1993 - \$4,402.00; 1994 - \$5,176.00, totalling \$12,292.00. \$12,292.00 subtracted from \$89,688.00 equals \$77,396.00. It is also uncontroverted Plaintiff received \$8,500.00 in unemployment compensation which must be deducted from Plaintiff's total back pay. \$8,500.00 subtracted from \$77,396.00 equals \$68,896.00.

The parties stipulated and agreed 26% (19% federal and 7%

²The jury so found even though Plaintiff testified she had no evidence to refute that Defendant Robert Renberg's termination reasons were based on a good faith reasonable belief.

³The Court has disregarded expert Villareal's 30% benefits add-on to Plaintiff's \$35,000.00 annual salary because it is not based on factual evidence relevant to Plaintiff's benefits but on a national average.

⁴Uncontroverted evidence established all employees took a 10% pay cut in 1993, also relevant to 1994.

state) was to be deducted from the total back pay. \$17,912.96 (26% of \$68,896.00) subtracted from \$68,896.00 equals \$50,983.04.

9. The back pay due is \$50,983.04.

10. Liquidated damages due Plaintiff are \$50,983.04.

11. The parties agree and the Court finds that reinstatement of the Plaintiff at Renberg's, Inc. is not feasible because of the nature of the generally hostile relationship between the parties, one to the other.

12. The Court concludes for the following equitable reasons Plaintiff is entitled to no front pay:

(a) Plaintiff comes with unclean hands, she having knowingly approved the sex-related *quid pro quo* employment contract (Plaintiff's Ex. 19, Defendant's Ex. 1);

(b) Plaintiff's lack of higher education and training bring her qualifications into serious question regarding her future prospects for personnel director employment; and

(c) Two of her former principal employers at Renberg's, Inc., George R. Renberg and Donald Renberg, have provided Plaintiff with strong written recommendations for future employment.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the subject matter and the parties herein. 29 U.S.C. § 216(b).

2. Any Finding of Fact above which might be properly characterized a Conclusion of Law is incorporated herein.

3. The Court is bound by the jury's finding of willful intentional conduct on the part of the Defendants regarding

retaliation under 29 U.S.C. § 215(a)(3) in Plaintiff's employment termination of September 20, 1991. Tidwell v. Fort Howard Corporation, 989 F.2d 406, 412 (10th Cir. 1993), and Skinner v. Total Petroleum, Inc., 859 F.2d 1439 (10th Cir. 1988).⁵ Thus, Plaintiff is entitled to an award of liquidated damages equal to the amount of back pay.

4. Reinstatement is not called for herein because a productive and amicable working relationship is not possible. Blim v. Western Elec. Co., 731 F.2d 1473, 1479 (10th Cir. 1984); Hayes v. McIntosh, 604 F.Supp. 10 (N.D. Ind. 1984). Under the FLSA, an award of front pay is equitable in nature and left to the Court's sound discretion. Carter v. Sedgwick County, Kansas, 929 F.2d 1501, 1505 (10th Cir. 1991). Principles of equity are properly to be considered by the court regarding the issue of front pay. St. John v. Employment Development Dept., 642 F.2d 273 (9th Cir. 1981); 3 Warren Gorham Lamont, Employment Discrimination Coordinator ¶ 44,219 (1993). Thus, even though retaliated against, the clean hands doctrine may prevent the award of front pay because of Plaintiff's own misconduct.

The evidence indicates Plaintiff may not have continued in her employment by reason of her involvement in the subject employment sex-related contract. (Plaintiff's Ex. 19, Defendants' Ex. 1).

⁵There is authority to the contrary which states that the Court in exercise of its discretion may award no liquidated damages, although the jury finding is to the contrary, if there is evidence in the record to support the Court's finding of good faith and reasonable belief. Fowler v. Land Management Group, Inc., 978 F.2d 158, 163 (4th Cir. 1992).

Fadhl v. City and County of San Francisco, 741 F.2d 1163, 1166 (9th Cir. 1984); Bibbs v. Block, 778 F.2d 1318, 1323-24 (8th Cir. 1985); Muntin v. State of Calif. Parks & Recreation Dept., 671 F.2d 360, 363 (9th Cir. 1982). The Court concludes for said equitable reasons Plaintiff is not entitled to an award of front pay herein.

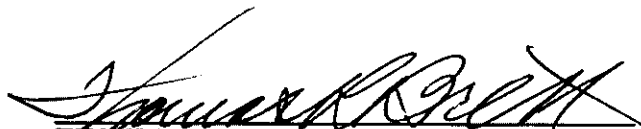
5. Whether the Defendants learned of Plaintiff's involvement in the subject *quid pro quo* sex-related employment contract (Plaintiff's Ex. 19, Defendants' Ex. 1) before or after September 20, 1991, it is relevant to Plaintiff's termination and/or continued employment. Summers v. State Farm Mutual Automobile Ins. Co., 864 F.2d 700 (10th Cir. 1988).

6. When the Plaintiff has been awarded liquidated damages as herein, Plaintiff is not entitled to an award of pre-judgment interest. Doty v. Elias, 733 F.2d 720, 726 (10th Cir. 1984).

7. Plaintiff is entitled to an award of costs and attorneys fees if timely applied for pursuant to Local Rule 54.1 and 54.2.

8. A judgment in keeping with the order filed contemporaneously herewith and these Findings of Fact and Conclusions of Law shall be entered this date.

IT IS SO ORDERED THIS 15th DAY OF JULY, 1994.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 15 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

LORI G. MCKENZIE,

Plaintiff,

vs.

RENBURG'S, INC. and ROBERT
L. RENBURG,

Defendants.

Case No. 92-C-398-B

ENTERED ON DOCKET

JUL 19 1994
DATE

O R D E R

This retaliatory discharge action was tried to a jury June 22, 23, 27, 28 and 29, 1994, and resulted in a verdict for the Plaintiff. Immediately prior to trial, a dispute arose between the parties regarding the proper measure of damages recoverable in a retaliatory discharge action brought pursuant to §215(a)(3) of the Fair Labor Standards Act ("FLSA"). The Court heard oral argument on the issue June 20, 1994, and permitted the parties to file supplemental briefs on the issue by June 21, 1994.

The Court entered an Order June 23, 1994, setting forth the arguments of the parties, the confused status of the law on the subject and ruling on the manner in which the trial would proceed.¹ The Court now *sua sponte* reconsiders its June 23, 1994, Order and supplements such Order as set forth herein.

The issue raised with regard to Plaintiff's FLSA claim is whether compensatory damages for emotional distress and/or punitive damages are recoverable under 29 U.S.C. §216(b), which provides in pertinent part:

¹ The Court further concluded that no pendent Oklahoma state public policy tort claim was present herein, which is unchanged by this Order.

c/low

Any employer who violates the provisions of section 215(a)(3) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages.

The above quoted language, which was added to the FLSA in 1977, provided for the first time a private remedy for employees terminated in violation of §215(a)(3) of the FLSA (the anti-retaliation provision), and seems to suggest that any and all remedies are available to a successful FLSA Plaintiff.

To this point, only one circuit court has addressed the issue of what remedies are available under this portion of §216(b). Travis v. Gary County Mental Health Center, 921 F.2d 108 (7th Cir. 1990); Soto v. Adams Elevator Equipment Co., 941 F.2d 543 (7th Cir. 1991). In Travis, the Seventh Circuit interpreted §216(b) broadly and concluded that compensation for emotional distress and punitive damages were appropriate remedies under §216(b).²

² The Seventh Circuit's opinion in Travis is interesting in many respects. First, in Travis the Plaintiff's lawyer did not pursue Plaintiff's claim for retaliatory discharge in violation of the FLSA under §215(a)(3) and §216(b). Instead, counsel chose to pursue plaintiff's claim under 42 U.S.C. §1985(2) of the Civil Rights Act as the basis for federal statutory recovery. In Travis, Plaintiff's counsel stated at oral argument that he pursued the claim under 42 U.S.C. §1985(2) because, he believed, decisions of the Supreme Court limited the availability of compensatory and punitive damages under the FLSA.

Also, the Seventh Circuit, in its three page Travis opinion, devoted two and a half pages to explaining why §1985(2) is unavailable to plaintiff as a theory of recovery and a terse 1/2 page to simply concluding that as a result of the 1977 amendment to the FLSA which added among other things the language "such legal and equitable relief as may be appropriate", all usual tort elements of damages are available to plaintiff, including punitive damages. The Travis court did not mention the significance of liquidated damages provided for in §216(b) in its analysis.

Absent from the terse Seventh Circuit Travis analysis is any

Other courts outside the Seventh Circuit have reached differing conclusions. See e.g. Martin v. American International Knitters Corporation, 1992 WL 108832 (N. Mariana Islands 1992)(adopting Travis and permitting compensatory and punitive damages); Waldermeyer v. ITT Consumer Financial Corp., 782 F.Supp. 96 (E.D. Mo. 1991)(concluding that punitive damages are not available under the FLSA); Glorioso v. Williams, 130 F.R.D. 664 (E.D. Wis. 1990)(holding that punitive damages are not available under the FLSA); Chappell v. Southern Maryland Hospital, Inc., 578 A.2d 766, 774 (Md. 1990)(suggesting that the FLSA does not allow for recovery of tort damages); and Skrove v. Heiraas, 303 N.W.2d 526, 532 (N.D. 1981)(holding that §216(b) does not permit an award of exemplary damages).

Although the Tenth Circuit Court of Appeals has not yet spoken on the issue of what damages are recoverable in a section 215(a)(3) retaliatory discharge action, it has interpreted similar statutory language in the Age Discrimination in Employment Act ("ADEA"). 29 U.S.C. §626(b) of the ADEA provides in pertinent part:

Provided, That liquidated damages shall be payable only in cases of willful violations of this chapter. In any action brought to enforce this chapter the court shall have jurisdiction to grant such legal or equitable relief as may be appropriate to effectuate the purposes of this chapter, including without limitation judgments compelling employment, reinstatement or promotion, or enforcing the liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation under this section.

Despite this broad statutory language, in Perrell v.

discussion of prior Supreme Court cases holding that unless specifically provided otherwise, FLSA and ADEA remedies are the same. See Lorillard v. Pons, 434 U.S. 575 (1978).

FinanceAmerica Corp., 726 F.2d 654,657 (10th Cir. 1984), the Tenth Circuit limited the scope of recoverable damages under the ADEA to those specifically enumerated in section 626(b) and concluded that compensatory damages were not available. In Bruno v. Western Elec. Co., 829 F.2d 957 (10th Cir. 1987), the Tenth Circuit joined several other circuits in holding that punitive damages were also not recoverable under the ADEA.

This Court's task is to divine what damages the Tenth Circuit Court of Appeals will determine are available under §216(b) for a retaliatory discharge. Will it take the Travis court's approach or will it follow its ADEA analysis and conclude that for all practical purposes the language of FLSA §216(b) and ADEA §626(b) regarding "such legal or equitable relief as may be appropriate ... including without limitation" is the same.

In its Order of June 23, 1994, this Court decided to permit the issue of compensatory damages for emotional distress and the issue of punitive damages to go to the jury. After finding that Plaintiff was terminated in retaliation for reporting suspected violations of the FLSA, the jury awarded Plaintiff damages for emotional distress and punitive damages.

After further consideration and review of the parties supplemental briefs, the Court is persuaded that the Tenth Circuit Court of Appeals would adopt its analysis of the similar language of ADEA section 626(b) and hold that compensatory damages for emotional distress and punitive damages are not recoverable in FLSA retaliatory discharge actions.

Therefore, the Court should not have instructed the jury on

the issues of emotional distress and punitive damages and judgment on the jury's award of such damages should not be entered. A separate judgment in accordance with the jury's verdict, as modified by this Order and to comport with the factual support in the record³, and the Court's findings of fact and conclusions of law concerning liquidated damages and front pay along with costs and reasonable attorney fees will be entered contemporaneously herewith.

IT IS SO ORDERED this 15th day of July, 1994.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

³ See paragraph 8 of the Court's findings of fact and conclusions of law filed this date.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 15 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

LORI MCKENZIE,

Plaintiff,

vs.

RENBURG'S, INC., and ROBERT L.
RENBURG,

Defendants.

Case No. 92-C-398-B

ENTERED FOR COURT

DATE JUL 19 1994

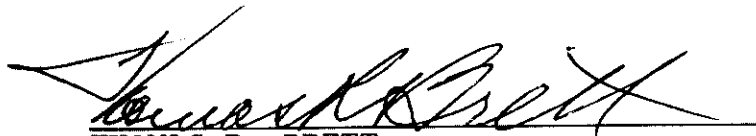
J U D G M E N T

In accordance with the jury verdict, the Court's order entered contemporaneously herewith pursuant to Fed.R.Civ.P. 50(a) and (b), and the Court's Findings of Fact and Conclusions of Law entered this date, Judgment is hereby entered in favor of the Plaintiff, Lori McKenzie, and against the Defendants, Renberg's, Inc. and Robert L. Renberg, for back pay for Fifty Thousand Nine Hundred Eighty-Three Dollars and Four Cents (\$50,983.04), and liquidated damages in the amount of Fifty Thousand Nine Hundred Eighty-Three Dollars and Four Cents (\$50,983.04), in the total amount of One Hundred One Thousand Nine Hundred Sixty-Six Dollars and Eight Cents (\$101,966.08), plus post-judgment interest thereon at the rate of 5.31% per annum from this date. Judgment is entered in favor of said Defendants and against the Plaintiff on Plaintiff's claims for alleged emotional distress, reinstatement or front pay, pre-judgment interest and punitive damages.

Costs and reasonable attorneys fees are hereby awarded in favor of Plaintiff and against the Defendants if timely applied for pursuant to Local Rule 54.1 and 54.2.

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DATED this 15th day of July, 1994.

A handwritten signature in black ink, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 7-19-94

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF OKLAHOMA

FILED

JUL 18 1994

MAPCO PETROLEUM INC.,

Plaintiff,

v.

PEOPLES TELEPHONE COMPANY, INC.,

Defendant.

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Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 94-cv-482-BU

NOTICE OF DISMISSAL

Mapco Petroleum Inc. ("MAPCO"), dismisses with prejudice the within action in its entirety.

Respectfully submitted,

CONNER & WINTERS

OF COUNSEL:

Kristen E. Cook
Assistant General Counsel
MAPCO PETROLEUM Inc.
1800 South Baltimore Street
Tulsa, Oklahoma 74119
(918) 581-1800

By:



John T. Schmidt, OBA #11028
R. Richard Love, III, OBA #14770
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 568-5711

ATTORNEYS FOR MAPCO PETROLEUM INC.

CERTIFICATE OF SERVICE

I, John T. Schmidt, hereby certify that on the 18th day of July, 1994, I mailed a true and correct copy of the above and foregoing instrument to:

Richard Dan Wagner, Esq.
I. Michele Drummond, Esq.
902 S. Boulder
Tulsa, OK 74119-2034

by depositing said copy in the United States mail with proper postage prepaid thereon.



John T. Schmidt

ENTERED ON DOCKET
JUL 18 1994

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 15 1994

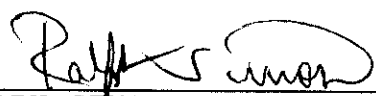
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JANICE M. HEARD, an individual,)
)
Plaintiff,)
)
vs.)
)
CHIEF SUPPLY CORPORATION, an)
Oklahoma corporation, d/b/a)
CAMCOR/CHIEF SUPPLY, a)
Clean American Corporation,)
)
Defendant.)

Case No. 93-C-782-*ER*

JOINT STIPULATION FOR OF
DISMISSAL WITH PREJUDICE

The Plaintiff Janice M. Heard and the Defendant, Chief Supply Corporation, an Oklahoma corporation, d/b/a Camcor/Chief supply, a Clean America Corporation, represent to the Court that they have reached a full and final settlement of the claims asserted in this action and thereby jointly stipulate for its dismissal with prejudice, each side to bear her, his or its own costs, expenses and attorneys' fees.


RALPH SIMON

Attorney for Plaintiff
Janice M. Heard

SHIPLEY, INHOFE & STRECKER


DAVID E. STRECKER
CONNIE LEE KIRKLAND

Attorney for Defendant
Chief Supply Corporation

ENTERED ON DOCKET

DATE 7-18-94

FILED

JUL 18 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DONALD P. TAYLOR

Plaintiff/Appellant,

vs.

UNITED STATES OF AMERICA,

Defendant/Appellee.

FILED

JUL 7 1994

No. 93-C-0608-E

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Now before the Court is Donald Taylor's ("Debtor's") appeal of a final order of the United States Bankruptcy Court for the Northern District of Oklahoma, entered June 22, 1993. The district court acts as an appellate court when reviewing a decision of the bankruptcy court, the decision representing a conclusion of law subject to *de novo* review. 28 U.S.C. Section 158 (a).¹ In determining whether the Bankruptcy Court erred in finding Debtor liable for \$117,162.16 in employment taxes, this court must decide whether the United States of America *ex rel.* the Internal Revenue Service ("IRS") properly assessed a 100-percent penalty against Debtor pursuant to 26 U.S.C. §6672.² For the reasons discussed below, the court affirms the Bankruptcy Court's decision.

¹ Conclusions of law are reviewed *de novo* by the District Court. See, *In re Electronic Metal Products, Inc.*, 916 F.2d 1502, 1504 (10th Cir. 1990); *In re Davidovich*, 901 F.2d 1533, 1536 (10th Cir. 1990).

² Section 6672 provides, in pertinent part: Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall...be liable for a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over.

I. Procedural History/Summary of Facts

On February 11, 1985, the IRS sent a letter to Debtor regarding the unpaid withholding taxes of Delta Cattle Corporation ("Delta"). See, Government Exhibit C1. The letter was accompanied by an attached IRS form No. 2751 proposing a penalty related to nine (9) employment tax quarters totalling \$117,162.26. See, Government Exhibit C2-Proposed Assessment of 100-Percent Penalty. The form also contained dates on which Forms 941 "Employer's Quarterly Federal Tax Returns" were filed, the dates on which taxes had been assessed against Delta, the specific quarterly tax periods, unpaid balance, and penalty amount for each quarter.

On March 8, 1985, a letter of protest was sent by Debtor to the IRS in response to the February 11, 1985 letter. See, Government Exhibit D. Debtor asserted that he was neither a "responsible person", nor had he willfully failed to collect and pay over said tax and, therefore, should not have been assessed a penalty under Section 6672. On March 18, 1985, the IRS assessed Debtor \$117,162.16 as a 100-Percent penalty for Delta employment taxes.³

On September 24, 1990, Debtor filed an action to determine and discharge tax liability. The IRS' Motion for Partial Summary Judgment, filed on October 28, 1991 and seeking to find Debtor to be a "responsible party" was denied. After trial, on this issue, Judge Stephen J. Covey entered judgment, holding that IRS had no claim against debtor for the unpaid taxes of Delta. Defendant IRS appealed this judgment.

³ See, Government Exhibit A-"Certificate of Assessment and Payments" (Penalty related to the nine taxable quarters in question and was assessed against Mr. Taylor for employment taxes collected but unpaid).

On March 16, 1993, the District Court reversed the order of the Bankruptcy Court and held pursuant to Section 6672, that debtor was a responsible person who willfully failed to account for and pay employment taxes withheld from the wages of Delta Cattle Corporation employees during nine quarters: the last quarter of 1981, all four quarters of 1982, the last three quarters of 1983, and the first quarter of 1984.

On or about March 29, 1993, Debtor filed a Motion to Alter or Amend the District Court's Order of March 16, 1993 arguing the Bankruptcy Court's decision should not have been reversed as it was not clearly erroneous; that Debtor did not have the responsibility to collect, truthfully account for, or pay over the employment taxes of Delta; and that Debtor's actions were not willful. Debtor further argues that the IRS cannot assess a single 100-percent penalty against a responsible person for multiple underlying quarters of unpaid Federal employment taxes, but is instead required to make nine separate Section 6672 assessments. Finally, Debtor urged reconsideration, arguing that the 100-percent penalty was properly assessed only for the first quarter of 1984.

The District Court entered an Order April 8, 1993 denying Debtor's Motion to Alter or Amend its prior Order with respect to the issue of whether the Debtor was liable as a responsible person and willfully failed to truthfully collect, account for, and pay over employment taxes of Delta. As to the issue of whether Debtor had been "properly assessed" a 100-percent penalty, the District Court remanded to the Bankruptcy Court.

On May 25, 1993, Debtor filed a Motion for Summary Judgment asserting that the entire assessment was improperly done and therefore erroneous. In the alternative, Debtor argued that only the penalty assessment due for the quarter ending March 31, 1984 was

proper, but was not valid with respect to the other eight (8) quarters. The IRS filed a Brief in Opposition to Debtor's Motion and a Crossmotion for Summary Judgment on June 15, 1993.

The Bankruptcy Court entered its final Order on June 22, 1993, determining that the 100-percent penalty assessment was proper and that Debtor is liable for the entire assessment amount. Debtor appealed this decision on October 19, 1993.

II. Legal Analysis

Upon remand, the United States District Court having found Debtor to be a "responsible person" and denying the motion to alter or amend its prior order, is left with only the issue of whether the Bankruptcy Court erred, as a matter of law, in holding that the IRS had properly assessed Debtor a 100-percent penalty pursuant to Section 6672 for the non-payment of employment taxes.⁴ The IRS must follow certain procedures in assessing a penalty (i.e. provide the identification of the taxpayer, the character of liability assessed, the taxable period, if applicable, and the amount, within three years from the filing of the return). In this case, these requirements have been met. Consequently, the Bankruptcy Court did not err as a matter of law.

The Internal Revenue Code holds any responsible person of a corporation who is required to collect tax, and who willfully fails to collect or account and pay, liable for a penalty equal to the total amount of tax evaded. *Section 6672, supra*. Debtor cites 26 U.S.C. Sections 6671 and 6665, which state in pertinent part, that penalties and liabilities shall be assessed and collected in the same manner as taxes. However, in determining its

⁴ Courts have given a broad interpretation to the term "responsible person" under Section 6672. *See, Williams v. United States*, 931 F. 2d 805, 810 (11th Cir. 1991).

appropriateness for the case at bar, the Court finds no requirement to assess a penalty under Section 6672 in the same quarter as the non-compliance.

The criteria for assessments is made in the Secretary's office in accordance with 26 U.S.C. Section 6203. That statute requires:

1. Identification of the taxpayer;
2. Character of the liability assessed;
3. Tax period, if applicable; and
4. Amount of assessment.

Treas. Reg. Section 301.6203-1(1967).

In assessing Debtor's liability, the IRS completed the "Certificate of Assessments and Payments" (IRS Form 4340). The "Certificate" identified Mr. Taylor as the taxpayer, included an explanation of the penalty assessed, along with the total amount from the tax periods in question.⁵

Debtor, however, does not argue that the Bankruptcy Court failed to follow the foregoing requirements. Instead, the Debtor claims that the Bankruptcy Court erred in finding liability for the \$117,162.16 when the assessment occurred only in the final quarter of the nine taxable quarters at issue. Debtor again interprets Section 6671(a) to say that Section 6672 penalties are to be assessed for each underlying quarterly tax period for which the Debtor failed to pay over employment taxes. The court finds this argument unpersuasive. While Federal Quarterly Employment Tax Returns, (IRS Form 941) is to be filed, paid, and is assessable on a quarterly basis, the Court finds no such requirement for

⁵ *Government Form 4340 is presumptively correct and provides necessary information to satisfy requirements of Treas. Reg. Section 301.6203-1. See, e.g., Egbert v. United States, 752 F.Supp. 1010, 1019(D.Wyo.1990), aff'd 940 F.2d 539(10th Cir.)cert. denied, ___ U.S. ___ (1991).*

a Section 6672 penalty.⁶ As the IRS argues, an interpretation of Section 6672 provides that a responsible person is liable for "a penalty" equal to the total amount of unpaid tax.⁷ A properly executed Form 4340 referring to tax periods making up the accrued liability invokes the "presumption of validity" as to the assessment. Once the IRS produced a copy of the tax assessment, the burden shifted to Debtor to show that the assessment against him was incorrect.⁸ In this case, Debtor has neither rebutted the presumption required once the Certificate of Assessment revealed the taxpayer's liability, nor produced countervailing proof contrary to the assessment.

The Debtor further contends that it is necessary to separately assess the penalty for each quarter for the statute of limitations to be applied properly. Debtor argues that if the IRS is permitted to include numerous quarters in a single assessment, recorded in the last quarter, it may include quarters for which the statute of limitations had run. The law states the assessment must be made within three years of the filing of the return which is the subject of the litigation. See, 26 U.S.C. §6501(a). This argument is without merit as the "Certificate of Assessment and Payment" was timely prepared for all periods. The assessment was completed within the permitted statute of limitations upon standard, accepted IRS forms.

⁶ See, Kelly v. Leher, 362 F.2d 629, 631-632 (8th Cir. 1966) ("Responsible persons" assessed a 100-percent penalty for taxes corporation had failed to pay for four quarters).


⁷ A penalty assessed against a responsible person is separate and distinct from the underlying liability of the corporate employer. See, Monday v. United States, 421 F.2d 1210,1218 (7th Cir.1970); Howard v. United States, 711 F.2d 729, 733(5th Cir.1983).

⁸ Corigliano v. United States, 829 F.Supp. 114, 119 (E.D. Pa. 1993)(Plaintiff can show the assessment was incorrect by establishing either (1) he was not a responsible person, or (2) that he did not willfully fail to pay amount due.

III. Conclusion

The Court finds upon review of the record and applicable statutory and case law, that the Bankruptcy Court did not err in determining the IRS had properly assessed a 100-percent penalty tax under Section 6672(a) against Debtor. The Debtor's argument in the alternative is therefore not applicable where the penalty properly included all nine tax quarters. After considering the prescribed regulations and standards of assessment, the undersigned recommends that the Bankruptcy Court's decision be AFFIRMED.

SO ORDERED THIS 15th day of July, 1994.



JAMES O. ELLISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 7-18-94

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 15 1994

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

REXAIR, INC., a Delaware
corporation,

Plaintiff,

v.

No. 94 C 104 E

MCKEES SEWING CENTER, INC.,
an Oklahoma corporation,

Defendant.

JOINT STIPULATION FOR DISMISSAL WITH PREJUDICE

Pursuant to Fed. R. Civ. Pro. 41(a)(1), and the Settlement Agreement entered into between the parties on the 13th day of July, 1994, the above captioned action is dismissed with prejudice, with each party bearing its own costs including attorney's fees.

DOERNER, STUART, SAUNDERS,
DANIEL, ANDERSON & BIOLCHINI

By: 

Dallas E. Ferguson, OBA # 2871
320 South Boston, Suite 500
Tulsa, Oklahoma 74103
(918) 582-1211

Attorneys for Rexair, Inc.

HOWARD AND WIDDOWS, P.C.

By: 

P. Gae Widdows, OBA # 9585
2021 South Lewis, Suite 470
Tulsa, Oklahoma 74101
(918) 582-1211

Attorney for McKees Sewing
Center, Inc.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ERNEST E. KUEHN, JR.; VIOLA M.
KUEHN; COUNTY TREASURER, Nowata
County, Oklahoma; and BOARD OF
COUNTY COMMISSIONERS, Nowata
County, Oklahoma,

Defendants.

FILED

JUL 1 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE JUL 15 1994

CIVIL ACTION NO. 92-C-830-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 14 day
of July, 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, Ernest E. Kuehn, Jr.; Viola M. Kuehn;
County Treasurer, Nowata County, Oklahoma; and Board of County
Commissioners, Nowata County, Oklahoma, appear not, but make
default.

The Court being fully advised and having examined the
court file finds that the Defendant, County Treasurer, Nowata
County, Oklahoma, acknowledged receipt of Summons and Complaint
on September 21, 1992; and that Defendant, Board of County
Commissioners, Nowata County, Oklahoma, acknowledged receipt of
Summons and Complaint on September 18, 1992.

It appears that the Defendants, Ernest E. Kuehn, Jr.
and Viola M. Kuehn, filed their Application For Extension of Time
Within Which to File Answer on November 2, 1992, through their

attorney W. E. Maddux, but have failed to answer and their default has therefore been entered by the Clerk of this Court; that the Defendants, County Treasurer, Nowata County, Oklahoma, and Board of County Commissioners, Nowata County, Oklahoma, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon certain promissory notes and for foreclosure of a mortgage securing said promissory notes upon the following described real property located in Nowata County, Oklahoma, within the Northern Judicial District of Oklahoma:

The South 1/2 of the SE/4 SW/4, Section 6,
Township 28 North, Range 16 East.

The Court further finds that the Defendants, Ernest E. Kuehn, Jr. and Viola M. Kuehn, executed and delivered to the United States of America, acting through the Farmers Home Administration, the following promissory notes:

<u>Loan Number</u>	<u>Original Amount</u>	<u>Date</u>	<u>Interest Rate</u>
29-01	\$47,000.00	05/07/79	8.50%
(Loan No. 29-01 reamortized to Loan No. 29-07)			
29-02	15,000.00	05/07/79	8.50%
(Loan No. 29-02 consolidated with Loan 29-03 to Loan 29-06)			
29-03	11,700.00	05/08/80	12.00%
(Loan No. 29-03 consolidated with Loan 29-02 to Loan 29-06)			
43-04	8,920.00	12/23/80	5.00%
(Loan No. 43-04 rescheduled to 43-05)			
43-05	9,503.76	05/02/83	5.00%
(Loan No. 43-05 rescheduled to 43-08)			
29-06	27,432.16	05/02/83	10.25%
(Loan No. 29-06 rescheduled to 29-09)			
29-07	58,326.20	01/25/85	8.50%
43-08	10,172.86	01/25/85	5.00%
29-09	32,050.78	01/25/85	10.25%

The Court further finds that as security for the payment of Loans Nos. 29-07 and 29-09, the Defendants, Ernest E. Kuehn, Jr. and Viola M. Kuehn, executed and delivered to the United States of America, acting through the Farmers Home Administration, a real estate mortgage dated May 7, 1979, covering the above-described property, situated in the State of Oklahoma, Nowata County. This mortgage was recorded on May 9, 1979, in Book 504, Page 397, in the records of Nowata County, Oklahoma.

The Court further finds that the Defendants, Ernest E. Kuehn, Jr. and Viola M. Kuehn, made default under the terms of the aforesaid notes and mortgage by reason of their failure to make the yearly installments due thereon, which default has continued, and that by reason thereof the Defendants, Ernest E. Kuehn, Jr. and Viola M. Kuehn, are indebted to the Plaintiff in the principal sum of \$97,371.87, plus accrued interest in the amount of \$35,337.31 as of March 31, 1992, plus interest accruing thereafter at the rate of \$23.7104 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$8.00 (fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Nowata County, Oklahoma, are in default and therefore have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting through the

Farmers Home Administration, have and recover judgment in rem against the Defendants, Ernest E. Kuehn, Jr. and Viola M. Kuehn, in the principal sum of \$97,371.87, plus accrued interest in the amount of \$35,337.31 as of March 31, 1992, plus interest accruing thereafter at the rate of \$23.7104 per day until judgment, plus interest thereafter at the current legal rate of 5.31 percent per annum until paid, plus the costs of this action in the amount of \$8.00 (fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Nowata County, Oklahoma, have no right, title or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Ernest E. Kuehn, Jr. and Viola M. Kuehn, to satisfy the in rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein
in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the
Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under
and by virtue of this judgment and decree, all of the Defendants
and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of any
right, title, interest or claim in or to the subject real
property or any part thereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney

PETER BERNHARDT, OBA #741
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

Judgment of Foreclosure
Civil Action No. 92-C-830-B

PB:css

FILED 1994 JUL 15 1994

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

MATTHEW F. CUMMINGS a/k/a
MATTHEW FRANK CUMMINGS;
STEPHANIE ANN BUTLER, formerly)
STEPHANIE ANN CUMMINGS a/k/a)
STEPHANIE A. CUMMINGS; COUNTY)
TREASURER, Tulsa County,)
Oklahoma; BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
Defendants.)

FILED

JUL 14 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 93-C-424-BU

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 13 day
of July, 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Neal B. Kirkpatrick, Assistant United States
Attorney; the Defendants, COUNTY TREASURER, Tulsa County,
Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; the Defendant, MATTHEW FRANK
CUMMINGS, appears by Ricki M. Replin, esq.; and the Defendant,
STEPHANIE ANN BUTLER fka Stephanie Ann Cummings, appears not, but
makes default.

The Court being fully advised and having examined the
court file finds that the Defendant, MATTHEW FRANK CUMMINGS, was
served a copy of Summons and Complaint on January 19, 1994; that
Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, acknowledged
receipt of Summons and Complaint on May 17, 1993; and that

NO

FILED 1994 JUL 15 1994
UPON RECEIPT.

Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on May 10, 1993.

The Court further finds that the Defendant, STEPHANIE ANN BUTLER fka Stephanie Ann Cummings, was served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning February 11, 1994, and continuing through March 18, 1994, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, STEPHANIE ANN BUTLER fka Stephanie Ann Cummings, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, STEPHANIE ANN BUTLER fka Stephanie Ann Cummings. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Secretary of Housing and Urban Development, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Neal B. Kirkpatrick, Assistant United States Attorney,

fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to her present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendant served by publication.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on May 27, 1993; that the Defendant, MATTHEW FRAN CUMMINGS, by and through his attorney, Ricki M. Replin, esq., filed his Entry of Appearance on January 31, 1994; and that the Defendant, STEPHANIE ANN BUTLER fka Stephanie Ann Cummings, has failed to answer and default has therefore been entered by the Clerk of this Court.

The Court further finds that on January 12, 1991, the personal liability of the Defendant, MATTHEW FRANK CUMMINGS, on the debt represented by the subject note and mortgage was discharged in the United States Bankruptcy Court for the Northern District of Oklahoma, Case Number 90-02849-W, a Chapter 7 Bankruptcy.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Five (5), Block Six (6), WAKEFIELD
ADDITION to the City of Tulsa, Tulsa County,
Oklahoma, according to the Recorded Plat
thereof.

The Court further finds that on May 13, 1986, the Defendants, MATTHEW FRANK CUMMINGS and STEPHANIE ANN CUMMINGS, executed and delivered to First Security Mortgage Company, a mortgage note in the amount of \$48,429.00, payable in monthly installments, with interest thereon at the rate of Nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, MATTHEW FRANK CUMMINGS and STEPHANIE ANN CUMMINGS, executed and delivered to First Security Mortgage Company a mortgage dated May 13, 1986, covering the above-described property. Said mortgage was recorded on May 19, 1986, in Book 4943, Page 567, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 25, 1986, First Security Mortgage Company, assigned the above-described mortgage note and mortgage to Mortgage Clearing Corporation, its successors and assigns. This Assignment of Mortgage was recorded on February 12, 1987, in Book 5001, Page 1595, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 1, 1988, Mortgage Clearing Corporation, assigned the above-described mortgage note and mortgage to Triad Bank, N.A., its successors and assigns. This Assignment of Mortgage was recorded on July 18, 1989, in Book 5195, Page 644, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 21, 1989, Triad Bank, N.A. assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on October 6, 1989, in Book 5212, Page 1174, in the records of Tulsa County, Oklahoma.

The Court further finds that on October 1, 1989, the Defendants, MATTHEW FRANK CUMMINGS and STEPHANIE ANN CUMMINGS, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. A superseding agreement was reached between these same parties on May 1, 1990.

The Court further finds that the Defendants, MATTHEW FRANK CUMMINGS and STEPHANIE ANN CUMMINGS, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, MATTHEW FRANK CUMMINGS and STEPHANIE ANN CUMMINGS, are indebted to the Plaintiff in the principal sum of \$65,625.69, plus interest at the rate of Nine percent per annum from April 29, 1993 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendants, MATTHEW FRANK CUMMINGS and STEPHANIE ANN CUMMINGS, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendants, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment In Rem against the Defendants, MATTHEW FRANK CUMMINGS and STEPHANIE ANN CUMMINGS, in the principal sum of \$65,625.69, plus interest at the rate of Nine percent per annum from April 29, 1993 until judgment, plus interest thereafter at the current legal rate of 5.3 percent per annum until paid, plus the costs of this action, and any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, MATTHEW FRANK CUMMINGS and STEPHANIE ANN CUMMINGS, have no right, title or interest in the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, MATTHEW FRANK CUMMINGS and STEPHANIE ANN CUMMINGS, to satisfy the judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any

right, title, interest or claim in or to the subject real
property or any part thereof.

s/ [Signature]

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney

for Neil Patrick
NEAL B. KIRKPATRICK
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

J. Dennis Semler
J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Ricki M. Replin
RICKI M. REPLIN, OBA #7508
2431 East 51st Street
Expressway Tower, Suite 200
Tulsa, Oklahoma 74105
Attorney for Defendant,
Matthew Frank Cummings

Judgment of Foreclosure
Civil Action No. 93-C-424-B

NBK:flv

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,
vs.

SAMUEL M. BROWN;
MARCEL H. BROWN;
RONALD J. LATIMER;
SANDRA K. LATIMER;
COUNTY TREASURER, Tulsa County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.) CIVIL ACTION NO. 92-C-399-B

FILED

JUL 14 1994

Richard M. Lawton, Clerk
U. S. DISTRICT COURT

ENTERED ON DOCKET

DATE JUL 13 1994

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 14 day
of July, 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Neal B. Kirkpatrick, Assistant United States
Attorney; the Defendants, COUNTY TREASURER, Tulsa County,
Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendants, SAMUEL M.
BROWN; MARCEL H. BROWN RONALD J. LATIMER and SANDRA K. LATIMER,
appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendant, SAMUEL M. BROWN,
acknowledged receipt of Summons and Complaint on May 21, 1992;
that the Defendant, May 21, 1992; that Defendant, COUNTY
TREASURER, Tulsa County, Oklahoma, acknowledged receipt of
Summons and Complaint on May 19, 1992; and that Defendant, BOARD

OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on may 11, 1992.

The Court further finds that the Defendants, RONALD J. LATIMER and SANDRA K. LATIMER, were served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning April 21, 1994, and continuing through May 26, 1994, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, RONALD J. LATIMER and SANDRA K. LATIMER, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, RONALD J. LATIMER and SANDRA K. LATIMER. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns, and its attorneys, Stephen C. Lewis, United States

Attorney for the Northern District of Oklahoma, through Neal B. Kirkpatrick, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to there present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on June 1, 1992; and that the Defendants, SAMUEL M. BROWN; MARCEL H. BROWN RONALD J. LATIMER and SANDRA K. LATIMER failed to answer and default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

**Lot Sixteen (16), Block One (1), HUNTERS RUN,
an Addition in Tulsa County, State of
Oklahoma, according to the recorded Plat
thereof.**

The Court further finds that on March 1, 1985, the Defendants, RONALD J. LATIMER and SANDRA K. LATIMER, husband and wife, executed and delivered to Liberty Mortgage Company a promissory note in the amount of \$52,055.00, payable in monthly

installments, with interest thereon at the rate of Twelve percent (12%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, RONALD J. LATIMER and SANDRA K. LATIMER, husband and wife, executed and delivered to Liberty Mortgage Company, a mortgage dated March 1, 1985, covering the above-described property. Said mortgage was recorded on March 4, 1985, in Book 4847, Page 2721, in the records of Tulsa County, Oklahoma.

The Court further finds that on March 31, 1986, Liberty Mortgage Company, assigned the above-described promissory note and mortgage to GMAC Mortgage Corporation of Iowa. This Assignment of Mortgage was recorded on April 4, 1986, in Book 4933, Page 3174, in the records of Tulsa County, Oklahoma.

The Court further finds that on July 5, 1988, GMAC Mortgage Corporation of Iowa, assigned the above-described promissory note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on July 11, 1988, in Book 5113, Page 1092, in the records of Tulsa County, Oklahoma. A Corrected Assignment was recorded on October 20, 1988, in Book 5135, Page 1145, in the records of Tulsa County, Oklahoma, to correct the typographical defects.

The Court further finds that on March 8, 1985, The Defendants, RONALD J. LATIMER and SANDRA K. LATIMER, husband and wife, granted a general warranty deed to the Defendants, SAMUEL M. BROWN and MARCEL H. BROWN, husband and wife. This deed was

recorded with the Tulsa County Clerk on March 29, 1985, in Book 4852 at Page 1600 and the Defendants, SAMUEL M. BROWN and MARCEL H. BROWN, assumed thereafter payment of the amount due pursuant to the note and mortgage described above.

The Court further finds that on June 9, 1988, the Defendants, SAMUEL M. BROWN and MARCEL H. BROWN, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. A superseding agreement was reached between these same parties on July 20, 1989.

The Court further finds that the Defendants, SAMUEL M. BROWN and MARCEL H. BROWN, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, SAMUEL M. BROWN and MARCEL H. BROWN, are indebted to the Plaintiff in the principal sum of \$82,778.20, plus interest at the rate of Twelve percent per annum from May 6, 1992 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$19.00 which became a lien on the property as of June 30, 1987; a lien in the amount of \$12.00 which became a lien on the property as of July 7, 1988; a lien

in the amount of \$11.00 which became a lien on the property as of July 5, 1989; and a lien in the amount of \$10.00 which became a lien on the property as of July 2, 1990. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, SAMUEL M. BROWN; MARCEL H. BROWN RONALD J. LATIMER and SANDRA K. LATIMER, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendants, SAMUEL M. BROWN and MARCEL H. BROWN, in the principal sum of \$82,778.20, plus interest at the rate of Twelve percent per annum from May 6, 1992 until judgment, plus interest thereafter at the current legal rate of 5.31 percent per annum until paid, plus the costs of this action, and any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance,

abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$52.00 for personal property taxes for the years 1986-1989, plus any accruing interest and the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, SAMUEL M. BROWN; MARCEL H. BROWN RONALD J. LATIMER and SANDRA K. LATIMER, have no right, title or interest in the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, SAMUEL M. BROWN and MARCEL H. BROWN, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein
in favor of the Plaintiff;

Third:

In payment of Defendant, COUNTY TREASURER,
Tulsa County, Oklahoma, in the amount of
\$52.00, plus any accruing interest and the
cost of this action for, personal property
taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the
Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
pursuant to 12 U.S.C. 1710(1) there shall be no right of
redemption (including in all instances any right to possession
based upon any right of redemption) in the mortgagor or any other
person subsequent to the foreclosure sale.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under
and by virtue of this judgment and decree, all of the Defendants
and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of any
right, title, interest or claim in or to the subject real
property or any part thereof.


S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


NEAL B. KIRKPATRICK
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 92-C-399-B

NBK:flv

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DEBORAH JEAN FRIERSON;
CITY OF GLENPOOL, Oklahoma
COUNTY TREASURER, Tulsa County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

FILED

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT

ENTERED IN DOCKET

DATE JUL 13 1994

CIVIL ACTION NO. 94-C-387-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 14 day
of July, 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and
BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by
J. Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; and the Defendants, DEBORAH JEAN FRIERSON and THE CITY
OF GLENPOOL, Oklahoma, appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendant, DEBORAH JEAN FRIERSON,
acknowledged receipt of Summons and Complaint on May 7, 1994;
that the Defendant, THE CITY OF GLENPOOL, Oklahoma, acknowledged
receipt of Summons and Complaint on May 16, 1994; that Defendant,
COUNTY TREASURER, Tulsa County, Oklahoma, acknowledged receipt of
Summons and Complaint on April 21, 1994; and that Defendant,

BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on April 21, 1994.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on May 9, 1994; and that the Defendants, DEBORAH JEAN FRIERSON and THE CITY OF GLENPOOL, Oklahoma, have failed to answer and default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Three (3), Block Nine (9), BRENTWOOD II, an Addition to the City of Glenpool, Tulsa County, State of Oklahoma, according to the recorded Amended plat thereof.

The Court further finds that on April 6, 1983, the Defendant, DEBORAH JEAN FRIERSON, executed and delivered to Midland Mortgage Co., a mortgage note in the amount of \$47,500.00, payable in monthly installments, with interest thereon at the rate of Twelve percent (12%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, DEBORAH JEAN FRIERSON, executed and delivered to Midland Mortgage Co., a mortgage dated April 6, 1983, covering the above-described property. Said mortgage was recorded on April 13, 1983, in Book 4683, Page 1248, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 26, 1989, Midland Mortgage Co., assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on October 3, 1989, in Book 5211, Page 426, in the records of Tulsa County, Oklahoma.

The Court further finds that on October 1, 1989, the Defendant, DEBORAH JEAN FRIERSON, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on December 1, 1990, November 1, 1991, and October 1, 1992.

The Court further finds that the Defendant, DEBORAH JEAN FRIERSON, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, DEBORAH JEAN FRIERSON, is indebted to the Plaintiff in the principal sum of \$58,719.45, plus interest at the rate of Twelve percent per annum from April 7, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has liens on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$8.00 which became a lien on the

property as of July 5, 1989; in the amount of \$34.00 which became a lien on the property as of June 26, 1992; in the amount of \$30.00 which became a lien on the property as of June 25, 1993; and a claim in the amount of \$29.00 for taxes due. Said liens and claims are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, DEBORAH JEAN FRIERSON and THE CITY OF GLENPOOL, Oklahoma, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendant, DEBORAH JEAN FRIERSON, in the principal sum of \$58,719.45, plus interest at the rate of Twelve percent per annum from April 7, 1994 until judgment, plus interest thereafter at the current legal rate of 5.31 percent per annum until paid, plus the costs of this action, and any additional sums advanced or to be advanced or expended during

this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$101.00 for personal property taxes for the years, 1988, 1991, 1992, and 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, DEBORAH JEAN FRIERSON and THE CITY OF GLENPOOL, Oklahoma, have no right, title or interest in the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, DEBORAH JEAN FRIERSON, to satisfy the judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action
accrued and accruing incurred by the

Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$101.00, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



PHIL PINNELL
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 94-C-387-B

PP:flv

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 13 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

MARK A. CLEMENTS,

Plaintiff(s),

v.

TULSA CITY PUBLIC DEFENDERS OFFICE,
ET AL,

Defendant(s).

94-C-01113-B

K ✓

ORDER

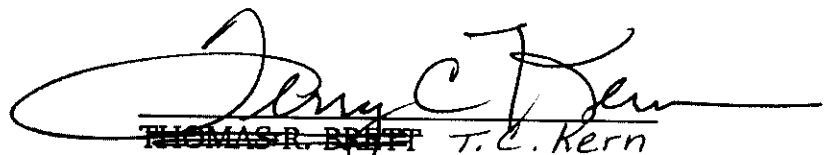
The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed June 20, 1994 in which the Magistrate Judge recommended that the case be dismissed without prejudice.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate Judge should be and hereby is adopted and affirmed.

It is, therefore, Ordered that the recommendations of the Magistrate Judge are hereby adopted as set forth above and this case is hereby dismissed without prejudice.

SO ORDERED THIS 13 day of July, 1994.


THOMAS R. BRETT T.C. Kern
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 7-15-94

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

F

vs.

JESS ALLAN TUCKER; KARI BETH
TUCKER; CITY OF TULSA;
COUNTY TREASURER, Tulsa County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.) CIVIL ACTION NO. 94-C 139E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 13 day
of July, 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Neal B. Kirkpatrick, Assistant United States
Attorney; the Defendants, **County Treasurer, Tulsa County,**
Oklahoma, and **Board of County Commissioners, Tulsa County,**
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; the Defendant, **City of Tulsa,**
appears not, having previously filed its disclaimer; and the
Defendants, **Jess Allan Tucker and Kari Beth Tucker,** appear not,
but make default.;

The Court being fully advised and having examined the
court file finds that the Defendant, **City of Tulsa,** acknowledged
receipt of Summons and Complaint on March 8, 1994; and that
Defendant, **Board of County Commissioners, Tulsa County, Oklahoma,**
acknowledged receipt of Summons and Complaint on February 18,
1994.

The Court further finds that the Defendants, **Jess Allan Tucker and Kari Beth Tucker**, were served by publishing notice of this action in the Tulsa Daily Commerce and Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning April 14, 1994, and continuing through May 19, 1994, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, **Jess Allan Tucker and Kari Beth Tucker**, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstractor filed herein with respect to the last known addresses of the Defendants, **Jess Allan Tucker and Kari Beth Tucker**. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Secretary of Housing and Urban Development, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Neal B. Kirkpatrick, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and

identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, **County Treasurer, Tulsa County, Oklahoma**, and **Board of County Commissioners, Tulsa County, Oklahoma**, filed their Answer on March 10, 1994; and that the Defendant, **City of Tulsa**, filed its disclaimer on March 8, 1994.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Eight (8), Block four (4), LOSEY'S ADDITION to Dawson, Now an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plan No. 1200.

The Court further finds that on January 15, 1987, the Robbie Cunningham and Amy Rogers, both single persons, executed and delivered to Sears Mortgage Corporation their mortgage note in the amount of \$31,343.00, payable in monthly installments, with interest thereon at the rate of ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, Robbie Cunningham and Amy Rogers, both single persons, executed and delivered to Sears

Mortgage Corporation a mortgage dated January 15, 1987, covering the above-described property. Said mortgage was recorded on January 21, 1987, in Book 4996, Page 2037, in the records of Tulsa County, Oklahoma.

The Court further finds that on February 29, 1988, Sears Mortgage Corporation assigned the above-described mortgage note and mortgage to Independence One Mortgage Corporation. This Assignment of Mortgage was recorded on July 22, 1988, in Book 5116, Page 905, in the records of Tulsa County, Oklahoma.

The Court further finds that on February 3, 1989, Independence One Mortgage Corporation assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on February 9, 1989, in Book 5166, Page 33, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 6, 1988, Robbie Cunningham and Amy Rogers, both single persons, granted a General Warranty Deed to the Defendants, Jess Allan Tucker and Kari Beth Tucker, husband and wife; this deed was recorded on June 7, 1988, in Book 5105, Page 1510, in the records of Tulsa County, Oklahoma; and the Defendants, Jess Allan Tucker and Kari Beth Tucker, husband and wife, assumed thereafter payment of the amount due pursuant to the note and mortgage described above.

The Court further finds that on February 1, 1989, the Defendants, Jess Allan Tucker and Kari Beth Tucker, entered into an agreement with the Plaintiff lowering the amount of the

monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on April 1, 1990, April 1, 1991, and October 1, 1991.

The Court further finds that the Defendants, **Jess Allan Tucker and Kari Beth Tucker**, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, **Jess Allan Tucker and Kari Beth Tucker**, are indebted to the Plaintiff in the principal sum of \$50,818.89, plus interest at the rate of 10 percent per annum from March 1, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, **County Treasurer, Tulsa County, Oklahoma**, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$17.00 which became a lien on the property as of June 26, 1992; a lien in the amount of \$3.00, which became a lien as of June 25, 1993; and a claim against the subject property in the amount of \$3.00 for the tax year 1993. Said liens and claim are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, **Board of County Commissioners, Tulsa County, Oklahoma**, claims no right, title or interest in the subject real property

The Court further finds that the Defendants, **Jess Allan Tucker and Kari Beth Tucker**, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendant, **City of Tulsa**, disclaims any right, title or interest in the subject property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment in rem against the Defendants, **Jess Allan Tucker and Kari Beth Tucker**, in the principal sum of \$50,818.89, plus interest at the rate of 10 percent per annum from March 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5.31 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **County Treasurer, Tulsa County, Oklahoma**, have and recover judgment in the amount of \$23.00 for personal property taxes for the years 1991-1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Jess Allan Tucker, Kari Beth Tucker and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Jess Allan Tucker and Kari Beth Tucker, to satisfy the in rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;


Third:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$23.00, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

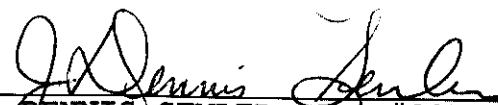
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.


UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


NEAL B. KIRKPATRICK
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 94-C 139E

NBK:lg

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 14 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

BELINDA G. OSBOURN,
an Individual,

Plaintiff,

vs.

ASSOCIATED WHOLESALE GROCERS,
a Missouri Corporation,

Defendant.

Case No. 93-C-830-B

ENTERED THE COURT

DATE JUL 15 1994

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW the parties by and through their attorneys of record and pursuant to a Settlement Agreement stipulate to the dismissal of this lawsuit against Associated Wholesale Grocers, Inc.

**RIGGS, ABNEY, NEAL, TURPEN,
ORBISON & LEWIS**

By: Mark W. Schilling
Mark W. Schilling, OBA # 15174
Donald M. Bingham, OBA #794
502 West Sixth Street
Tulsa, Oklahoma 74119-1010
(918) 587-3161

ATTORNEYS FOR PLAINTIFF

HUDEK & ASSOCIATES, P.C.

By: Paul F. Pautler
Paul F. Pautler
Gail Hudek
280 Nichols Road
Kansas City, Missouri 64112

ATTORNEYS FOR DEFENDANT

JUDGE OF THE DISTRICT COURT

ENTERED ON DOCKET

DATE JUL 14 1994

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JEFFREY ALLEN BROOKS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE AIR FORCE,
and CORDELL CALLOWAY, an
individual,

Defendants.

Case No. 94-C-255-BU ✓

FILED

JUL 17 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This matter comes before the Court upon the Motion to Dismiss filed by the plaintiff, Jeffrey Allen Brooks. Upon due consideration, the Court finds that the plaintiff's motion should be granted.

Accordingly, the plaintiff's Motion to Dismiss is GRANTED. The plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE to refiling.

ENTERED this 12th day of July, 1994.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 13 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

D.C.A. GRANTOR TRUST,

Plaintiff,

vs.

PROTECTION MUTUAL INSURANCE
COMPANY, INDUSTRIAL RISK
INSURERS, PHILIP MORRIS
MANAGEMENT CORP. and PHILIP
MORRIS INCORPORATED, and OSCAR
MAYER FOODS CORPORATION,

Defendants.

Case No. 93-C-594-B

ENTERED FOR DOCKET

DATE JUL 14 1994

ORDER

Now before the Court for its consideration are the Plaintiff's Motion for New Trial (Docket #56), Defendant Oscar Mayer Foods Corporation's (Oscar Mayer) Motion for Attorneys Fees (Docket #58) and Oscar Mayer's Motion For Relief From Judgment Pursuant To Rule 60 Fed.R.Civ.P. (Docket #65), the latter motion seeking relief from the Court's Judgment entered April 28, 1994, which stated that each party is to bear its own attorneys fees.

BACKGROUND

Defendant Oscar Mayer, a wholly owned subsidiary of Defendant Phillip Morris, entered into a lease with Plaintiff for a food processing plant in Tulsa, Oklahoma. The lease was to and did expire on December 31, 1991. The lease required that Oscar Mayer insure the property during the lease period. Oscar Mayer did provide Plaintiff with proof of insurance throughout the lease term. During the lease term and up until October 1, 1991, Defendant Philip Morris had purchased a policy from Defendant

27

Protection Mutual Insurance Company (Protection Mutual) for the plant leased by Oscar Mayer. When the insurance in force on October 1, 1991 expired, Philip Morris purchased insurance on behalf of Oscar Mayer in which Protection Mutual and Defendant Industrial Risk Insurers (I.R.I.) each provided 50% of the insurance coverage on the leased premises. A Certificate of Insurance was issued to Plaintiff in October, 1991 stating that the leased property had "all risks" coverage in the amount of \$13,223,000 (this policy covered other properties owned or leased by Phillip Morris or its subsidiaries). The Certificate also stated that the policy expiration date was October 1, 1994. The lease expired on December 31, 1991, Oscar Mayer having previously vacated the premises. In February, 1993, Plaintiff alleges that it or he¹ sustained a loss by vandalism in the amount of approximately \$70,000.00. Plaintiff presented a claim to Defendant Protection Mutual for the loss. Protection Mutual countered that the loss was not covered because the omnibus policy contained a \$2,000,000 deductible and further that it had, after Oscar Mayer's lease with Plaintiff had expired and approximately five months before Plaintiff's alleged loss, at the request of Phillip Morris, deleted the leased premises from the policy coverage.

PLAINTIFF'S MOTION FOR NEW TRIAL

In its brief in support of its motion for new trial the

¹ In its Order granting summary judgment to Defendants the Court concluded that the issue whether Allan Applestein or D.C.A. Grantor Trust (of which Plaintiff claims to be the Trustee and sole beneficiary) is the proper plaintiff was unnecessary to decide in view of the ultimate rulings therein.

Plaintiff essentially reargues its positions on the various issues presented in previous motions before the Court. Plaintiff argues the Defendants had a contractual duty to furnish and pay for insurance policies with it being named as an additional loss payee. Plaintiff complains, as earlier, that the policy's deductible of \$2,000,000 was in derogation of the parties contract. In its Amended Complaint, Plaintiff sought reformation of the policy so that the \$2,000,000 deductible would not apply to the premises leased by Oscar Mayer, arguing alternatively that in the event that the policy cannot be reformed, that Oscar Mayer and Philip Morris should be responsible for the damages because the policy with a \$2,000,000 deductible did not comply with the requirements of the lease².

Plaintiff's New Trial arguments present absolutely nothing new to the Court for consideration. The arguments consist mainly of reexamination of the issues already decided and a lengthy recitation of findings of fact and conclusions of law Plaintiff contends the Court should have entered. Rule 59, Fed.R.Civ.P., requires more.

Plaintiff's Motion is essentially a motion for reconsideration. A Rule 59 motion for new trial or to alter or amend or reconsider is not a vehicle for a disgruntled party to "relitigate old issues" heard at the underlying trial or motion. Natural Resources Defense Council, Inc. v. United States

² The lease stated the amount of coverage specifically required but did not specify nor prohibit a deductible.

Environmental Protection Agency, 705 F.Supp. 698 (D.D.C. 1989), vacated upon agreement of the parties 707 F.Supp. 3 (D.D.C. 1989) (quoting Fontenot v. Mesa Petroleum Co., 791 F.2d 1207, 1219 (5th Cir. 1986); see also Youmans v. Simon, 791 F.2d 341, 349 (5th Cir. 1986) (Rule 59(e) motion that merely restated the arguments raised in movants' motion for a new trial was answered already by the court's decision of the underlying merits of the case). Accord Backlund v. Barnhart, 778 F.2d 1386, 1388 (9th Cir. 1985) (Rule 59(e) motion denied properly where movant "presented no arguments that had not already been raised in opposition to summary judgment"); Agola v. Hagner, 678 F.Supp. 988, 991 (E.D.N.Y. 1987) ("A motion under Rule 59 is not intended merely to relitigate old matters already considered or give a disappointed litigant another chance."); Frito-Lay of Puerto Rico, Inc. v. Canas, 92 F.R.D. 384, 390-391 (D.P.R. 1981) (Rule 59(e) motion that merely reasserts legal arguments previously made on motion for summary judgment provides no basis for vacating the judgment).

Furthermore, a motion to alter or amend can not be used to present evidence which was available but not offered at the original motion or trial. Natural Resources Defense Council, 705 F.Supp. at 702.

A motion to alter or amend must rely on one of three major grounds: "1) an intervening change in controlling law; 2) the availability of new evidence [not available previously]; and 3) the need to correct clear error [of law] or prevent manifest injustice." Id. (quoting All Hawaii Tours, Corp. v. Polynesian

Cultural Center, 116 F.R.D. 645,648-50 (D.Haw. 1987), partially rev'd on other grounds, 855 F.2d 860 (9th Cir. 1988)).

* * * [I]n actuality the plaintiff is moving the Court to reverse its order granting summary judgment to defendant and instead grant summary judgment to plaintiff or, in the alternative, grant plaintiff a trial of an allegedly disputed material fact.

The plaintiff in his brief brings forward no matter that could not have been argued before judgment was entered herein. His brief in support of his motion is no more than an expression of the view of the law contrary to that set forth in the Court's opinion. Whatever may be the purpose of Rule 59(e) it should not be supposed that it is intended to give an unhappy litigant one additional chance to sway the judge.

Since the plaintiff has brought up nothing new -- except his displeasure -- this court has no proper basis upon which to alter or amend the order previously entered.

The Court's concludes Plaintiff's Motion For New Trial should be and the same is hereby DENIED.

DEFENDANT'S ATTORNEYS FEE AND RELIEF FROM JUDGMENT MOTIONS

The Court next considers Oscar Mayer's Motion For Attorneys Fees and Motion For Relief From Judgment.

Plaintiff argues the latter motion should be denied because it is a mere substitute for appeal and Defendant Oscar Mayer has failed to timely file either a Motion for New Trial or a Notice of Appeal. The Court agrees and concludes Oscar Mayer's Rule 60 (b) motion should be denied. Morris v. Adams-Millis Corp., 758 F.2d 1352 (10th Cir.1985).

Notwithstanding, the Court is of the view (as previously expressed in its Judgment) that attorneys fees are not appropriate herein even if Oscar Mayer had preserved the issue by timely appeal

or motion for new trial.

Oscar Mayer seeks attorneys fees on the ground that the lease between it and Plaintiff provided that, in the event of a dispute under the lease agreement, the "losing party agrees to pay any and all costs and expenses, including reasonable attorney's fees". Oscar Mayer argues this matter is a dispute regarding the lease agreement. Plaintiff counters by asserting this action was not based upon the lease but rather sounded in tort and not in contract.

Oscar Mayer assails the Plaintiff for arguing in some of its pleadings that the suit was premised upon a contractual duty and reformation of a written insurance policy, but then opposing an attorneys fee motion because the case was in tort not contract. The Court agrees Plaintiff's arguments appear somewhat disingenuous on the tort/contract issue. However, an examination of Plaintiff's alternative theory of liability explains the apparent conflict.

Plaintiff sought, in an action in contract, to reform the insurance policy to exclude the \$2,000,000.00 deductible. Alternatively, Plaintiff sought, in an action in tort, to surcharge the Oscar Mayer group with liability for failing to present Plaintiff with an insurance policy which accords full coverage for the perils covered. In its earlier Order the Court concluded the Defendant insurance company, not a party to the lease between Plaintiff and the Oscar Mayer group, was not subject to its policy being reformed and that its denial of the claim, for the reasons of the deductible and the leased premises having been dropped from the

policy prior to the loss, exonerated the insurance company from any bad faith/punitive damages liability. Further, the Court's earlier concluded it was beyond dispute that the Oscar Mayer group had no obligation to insure the leased premises beyond the term of the lease.³

The Court agrees with Plaintiff that attorneys fees should not be awarded to Oscar Mayer but for different reasons than that asserted by Plaintiff. The gravamen of the instant action is not based upon the lease but reformation of the insurance policy. Thus, the attorneys fee clause of the lease is not implicated. Further, the alternative theory, tortious breach of a contractual duty, likewise is not based upon the lease but rather sounds in tort, also not implicating the lease's attorneys fee proviso.

The Court concludes Oscar Mayer's Motion For Attorneys Fees and Motion For Relief From Judgment should be and the same are hereby DENIED.

IT IS SO ORDERED this 13th day of July, 1994.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

³ The crux of Plaintiff's claim is that its "gift-horse" insurance coverage, putatively extending to October 1, 1994, contained a large deductible which precluded its 1993 burglary loss. Plaintiff erroneously claims it could rely on Protection Mutual's Certificate of Insurance which contained the excess coverage date but is not bound by the Certificate's caveat that it conferred no rights beyond that expressed in the policy.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE **JUL 14 1994**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 93-C-903-BU

ONE 1990 CHEVROLET PICKUP,
VIN 1GCDC14N8LZ222550,

and

ONE 1982 THUNDERBIRD 21
FOOT POWERBOAT,
SERIAL NO. TNRD3827M82F,

and

ONE 1992 BOMBARDIER EIGHT
FOOT WATERBIKE,
SERIAL NO. ZZN20224K192,
OKLAHOMA REGISTRATION
NO. OK7819CF,

Defendant.

FILED

JUL 14 1994

Richard L. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER DISMISSING CASE

This matter coming on before the undersigned Judge this
12th day of July 1994 upon the motion of the plaintiff to
dismiss this civil forfeiture action, and the Court, being fully
advised in the premises, finds that the Final Order of Forfeiture
of the defendant properties having been entered in Criminal Case
No. 93-CR-163-E, United States District Court for the Northern
District of Oklahoma, that this case should be dismissed.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED by the Court that this case be dismissed without prejudice and without costs.

s/ MICHAEL BURRAGE

MICHAEL BURRAGE
United States District Judge

N:\UDD\CHOOK\FC\McDERMOTT\04038

DATE 7-14-94IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMAWANDA L. SUMTER,
Plaintiff,

vs.

McDONNELL DOUGLAS CORPORATION,
et al.,
Defendants.

No. 93-C-80-E ✓

F J - D
JUL 13 1994
RICHARD L. CLARK
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMAORDER AND JUDGMENT

The Court has for consideration the Defendant's Motion for Summary Judgment (docket # 44). Plaintiff's original petition contained five causes of actions. Count One, for breach of the CBA under the Labor Relations Management Act of 1947, and Count Two, for breach of the Union's duty of fair representation, and Count Five, for intentional infliction of emotional distress, have been dismissed by the Plaintiff. Therefore, Defendant's Motion addresses Counts Three, a Title VII claim, and Count Four, an Oklahoma Public Policy claim.


From April 9, 1980, to October 23, 1991, Plaintiff was employed by the Defendant at its Tulsa plant. The employment was not continuous, because there were lay-off periods. In 1991, Defendant's security found certain Company property in the back of a company truck Plaintiff was using and concluded that she was attempting to steal the property. On the basis of that conclusion, she was terminated. Plaintiff challenged the termination at the EEOC level and, subsequently, before this Court.

At this juncture it is Plaintiff's burden to make out a prima facie case: 1) that she belongs to a protected class (female); 2) that she was terminated for violating a work rule; and 3) that similarly situated male employees were not terminated for similar violations. Defendant concedes that Plaintiff has proved elements one and two but challenges her assertion that male employees charged with theft or attempted theft of company property were not terminated. At the pre-trial conference held July 1, 1994, the Court directed Defendant to produce employment records relative to the issue for in camera review. The Court has received and reviewed the five files cited by the Plaintiff and submitted by the Defendant. The Court finds that Plaintiff cannot make out a prima facie case of gender discrimination as to the third element because the relevant evidence produced in these five files simply does not support her contentions. On the contrary, it is clear from the Defendant's records that male employees were also consistently terminated on the grounds of theft of company property. The Court directs the Defendant to retain the five records for appellate purposes. The only other evidence proffered by the Plaintiff in support of her claim of discrimination is a hearsay statement of someone whose identity she does not recall. Evidence, then, which is clearly inadmissible. Based upon the foregoing the Court must conclude that Plaintiff has failed to establish the requisite "presumption" of discrimination and the case must be dismissed as to Count Three. St. Mary's Honor Center v. Hicks, 113 S.Ct. 2742, 2747 (1993). The sole remaining claim, then, is a state law claim,

and pursuant to 28 U.S.C. § 1367, the Court declines to exercise supplemental jurisdiction over that claim. Therefore, Count Four is also dismissed.

Accordingly, it is the order of this Court that Judgment be entered in favor of the Defendant and against the Plaintiff. This case is, hereby, dismissed.

So ORDERED this 13th day of July, 1994.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 7-14-94

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARK ERIC STANFIELD; CITY OF
BROKEN ARROW, Oklahoma;
COUNTY TREASURER, Tulsa County,
Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

CIVIL ACTION NO. 94-C 347E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 13 day
of July, 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, **County Treasurer, Tulsa County, Oklahoma**, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
J. Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; the Defendant, **City of Broken Arrow, Oklahoma**, appears
by Michael R. Vanderburg, City Attorney; and the Defendant, **Mark
Eric Stanfield**, appears by his attorney Gary W. Wood.

The Court being fully advised and having examined the
court file finds that the Defendant, **Mark Eric Stanfield**,
acknowledged receipt of Summons and Complaint on April 27, 1994,
signed by attorney Gary W. Wood; that the Defendant, **City of
Broken Arrow, Oklahoma**, acknowledged receipt of Summons and
Complaint on April 11, 1994; that Defendant, **County Treasurer,
Tulsa County, Oklahoma**, acknowledged receipt of Summons and
Complaint on April 15, 1994; and that Defendant, **Board of County**

Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on April 11, 1994.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answer on April 29, 1994, and that the Defendant, County Treasurer, Tulsa County, Oklahoma, then filed an Amended Answer on June 10, 1994; and that the Defendant, City of Broken Arrow, Oklahoma, filed its Answer on May 4, 1994.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Twenty-two (22), Block Four (4), ARROW SPRINGS PARK, an Addition to the City of Broken Arrow, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on March 28, 1983, the Defendant, Mark Eric Stanfield, and Kathryn Lea Stanfield, then husband and wife, executed and delivered to LIBERTY MORTGAGE COMPANY their mortgage note in the amount of \$56,750.00, payable in monthly installments, with interest thereon at the rate of twelve percent (12%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Mark Eric Stanfield, and Kathryn Lea Stanfield, then husband and wife, executed and delivered to LIBERTY MORTGAGE COMPANY a mortgage dated March 28, 1983, covering the above-described property.

Said mortgage was recorded on April 4, 1983, in Book 4680, Page 2368, in the records of Tulsa County, Oklahoma.

The Court further finds that on March 31, 1986, Liberty Mortgage Company assigned the above-described mortgage note and mortgage to GMAC MORTGAGE CORPORATION OF IOWA. This Assignment of Mortgage was recorded on April 4, 1986, in Book 4933, Page 3174, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 15, 1989, GMAC Mortgage Corporation fka Norwest Mortgage Inc. assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on June 19, 1989, in Book 5189, Page 1606, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Mark Eric Stanfield, currently holds the fee simple title to the property by virtue of a Quit-Claim Deed executed by Kathryn Lea Stanfield, dated February 26, 1988, and recorded on February 29, 1988 in Book 5083, Page 1601, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Mark Eric Stanfield, and Kathryn Lea Stanfield, were granted a divorce decree, dated March 11, 1988, in Tulsa County District Court, Case Number FD 88-1133, and since that time, the Defendant, Mark Eric Stanfield, has been a single person.

The Court further finds that on November 5, 1991, the Defendant, Mark Eric Stanfield, filed his petition for Chapter 7 relief in United States Bankruptcy Court for the Northern

District of Oklahoma, Case Number 91-3927-W, and was discharged on February 28, 1992, and the case was closed on April 1, 1992.

The Court further finds that on June 1, 1989, the Defendant, Mark Eric Stanfield, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on June 1, 1990 and August 1, 1991.

The Court further finds that the Defendant, Mark Eric Stanfield, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, **Mark Eric Stanfield**, is indebted to the Plaintiff in the principal sum of \$98,403.36, plus interest at the rate of 12 percent per annum from March 29, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendants, **County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma**, claim no right, title or interest in the subject real property.

The Court further finds that the Defendant, **City of Broken Arrow, Oklahoma**, has no right, title or interest in the subject real property, except insofar as it is the lawful holder of certain easements as shown on the duly recorded plat of Arrow Spring Park Addition.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment in rem against the Defendant, Mark Eric Stanfield, in the principal sum of \$98,403.36, plus interest at the rate of 12 percent per annum from March 29, 1994 until judgment, plus interest thereafter at the current legal rate of 5.31 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, City of Broken Arrow, Oklahoma, has no right, title or interest in the subject real property, except insofar as it is the lawful holder of certain easements as shown on the duly recorded plat of Arrow Springs Park Addition.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Mark Eric Stanfield, to satisfy

the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

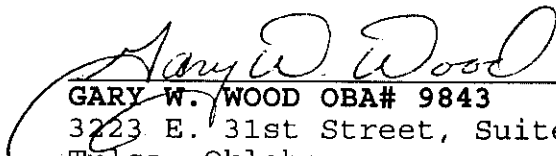
S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney




PHIL PINNELL
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463




GARY W. WOOD OBA# 9843
3223 E. 31st Street, Suite 100
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Attorney for Defendant
Mark Eric Stanfield



J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
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Tulsa, Oklahoma 74103
(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma



MICHAEL R. VANDERBURG OBA #9180
City Attorney,
CITY OF BROKEN ARROW
P. O. Box 610
Broken Arrow, OK 74012
(918) 251-5311
Attorney for Defendant
City of Broken Arrow, Oklahoma

Judgment of Foreclosure
Civil Action No. 94-C 347E
PP:lg

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 13 1994

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

SHEREE POWELL HENDERSON

Plaintiff,

vs.

CASE NO. 94-C-89-B

OKLAHOMA EMPLOYMENT SECURITY
COMMISSION, sued as: State of
Oklahoma, ex rel., the Board
of Review for the Oklahoma
Employment Security Commission,
OKLAHOMA EMPLOYMENT SECURITY
COMMISSION, and DEPARTMENT OF
LABOR, sued as: the United States
of America ex rel. United States
Department of Labor,

Defendants.

DATE **JUL 14 1994**

ORDER

Previously herein Plaintiff SHEREE POWELL HENDERSON and Defendant DEPARTMENT OF LABOR, sued as: the United States of America ex rel. United States Department of Labor, stipulated as to the dismissal of such Defendant. The Court concludes and the remaining parties agree that federal jurisdiction no longer exists.

Accordingly, this matter is herewith REMANDED to the District Court in and for Tulsa County, State of Oklahoma, instantly.

IT IS SO ORDERED this 13th day of July, 1994.


THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE JUL 13 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 8 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

KIM SHUMATE, Individually and)
as Personal Representative)
of the Heirs and Estate of)
HERBERT EUGENE FLICKINGER,)
Deceased,)

Plaintiff,)

v.)

FIBREBOARD CORPORATION,)
et al.,)

Defendants.)

M-1417
ASB No.

Case No. 90-C-260-C

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, and upon stipulation of Plaintiff, Kim Shumate, individually and as Personal Representative of the Heirs and Estate of Herbert Eugene Flickinger, Deceased, and Defendant, W.R. Grace & Co.-Conn., Plaintiff hereby dismisses with prejudice Defendant W.R. Grace & Co.-Conn. The parties agree that they will bear their own respective costs, fees and expenses.

UNGERMAN & IOLA

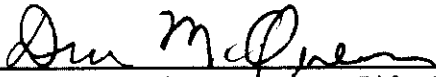
By: Randall I. Iola

Randall Iola
1323 E. 71st Street, Suite 300
Tulsa, Oklahoma 74170-1917

ATTORNEYS FOR PLAINTIFF

DOERNER, STUART, SAUNDERS,
DANIEL, ANDERSON & BIOLCHINI

Robert F. Biolchini (OBA #800)
Jon E. Brightmire (OBA #11623)
L. Dru McQueen (OBA #10100)

By: 
320 S. Boston Ave., 5th Floor
Tulsa, Oklahoma 74103
(918) 582-1211

ATTORNEYS FOR DEFENDANT,
W.R. GRACE & CO.-CONN.

CERTIFICATE OF MAILING

I do hereby certify that on the 8th day of July, 1994, I
mailed a true, correct, and exact copy of the above and foregoing
instrument to:

Scott M. Rhodes, Esq.
HUCKABY, FLEMING, FRAILEY,
CHAFFIN & DARRAH
1215 Classen Drive
Oklahoma City, Oklahoma 73146

Joseph W. Lampo, Esq.
POL SINELLI, WHITE, VARDEMAN & SHALTON
700 W. 47th Street, Suite 1000
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Michael J. Edwards, Esq.
BROWN, WINICK, GRAVES, BASKERVILLE
& SCHOENEBAUM
P.O. Box 52278
Tulsa, Oklahoma 74152

Murray E. Abowitz, Esq.
ABOWITZ & WELCH
15 N. Robinson, 10th floor
Oklahoma City, Oklahoma 73101

with proper postage thereon fully prepaid.



ENTERED ON DOCKET
JUL 13 1994
~~FILED~~

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUL 12 1994

DANIEL J. FULLER,

Plaintiff,

vs.

ABB METALLURGY, INC.,

Defendant.

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 93-C-647-BU

J U D G M E N T

This matter came before the Court upon the Motion for Summary Judgment filed by the Defendant, ABB Metallurgy, Inc., and the issues having been duly considered and a decision having been duly rendered,

It is ORDERED and ADJUDGED that judgment be entered in favor of the Defendant, ABB Metallurgy, Inc., and against the Plaintiff, Daniel J. Fuller, and that the Defendant, ABB Metallurgy, Inc., recover of the Plaintiff, Daniel J. Fuller, its costs of action.

DATED at Tulsa, Oklahoma, this 11th day of July, 1994.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

DATE JUL 13 1994

FILED

JUL 13 1994 *mw*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MITCHELL TROTTER, III,)
)
 Plaintiff and,)
 Cross-Defendant,)
)
 v.)
)
 COMMUNITY BANK & TRUST CO.,)
)
 Defendant, Cross-Plaintiff,)
 and Third-Party Plaintiff,)
)
 v.)
)
 UNITED STATES OF AMERICA, ex rel.)
 COMMISSIONER OF INTERNAL REVENUE)
 SERVICE; STATE OF OKLAHOMA, ex rel.)
 OKLAHOMA TAX COMMISSION and)
 EUNA TROTTER PERKINS,)
)
 Third-Party Defendants.)

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 93-C-482-B2

(Formerly Tulsa County
Case Number CJ 92-5361)

JOINT STIPULATION AND ORDER

On this 11th day of July, 1994, comes before the
Court this Joint Stipulation and Order, approved for entry by
Community Bank & Trust Co. and the United States of America.

The Court therefore finds:

1. That the interest of Community Bank & Trust Co. in the
proceeds from the certificates of deposit in issue in this case
is superior to the United States' interest in such proceeds.

2. This stipulation constitutes a final order in this case
between the United States and Community Bank & Trust Co. and each
party will bear their respective costs, including any possible
attorneys' fees or other expenses of this litigation.

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IT IS THEREFORE ORDERED AND ADJUDGED that the joint stipulation of the parties is hereby approved and adopted by the Court.

IT IS SO ORDERED this 11th day of July, 1994.

Michael Burrage
Judge Michael Burrage
United States District Court

Approved for Entry:

David McKinney
DAVID MCKINNEY, Esq.
Boesche, McDermott & Eskridge
800 One OK Plaza
100 W. 5th Street
Tulsa, OK 74103-4216
(918) 583-1777
ATTORNEY FOR COMMUNITY BANK & TRUST CO.

STEPHEN CHARLES LEWIS
United States Attorney

Dennis M. Duffy
DENNIS M. DUFFY, OBA # 013030
Trial Attorney
Tax Division
U.S. Department of Justice
P.O. Box 7238
Washington, D.C. 20044
Telephone: (202) 514-6496
ATTORNEY FOR UNITED STATES

ENTERED ON DOCKET

DATE 7-13-94

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F 117
JUL 13 1994
Richard L. ... Clerk
U.S. District Court
Northern District of Oklahoma

IN RE:)
HARRIS, ROBERT LEE, et al.,)
Debtors.)
MARK HARRIS, et al.,)
v.)
UNITED STATES OF AMERICA,)
FARMERS HOME ADMINISTRATION.)

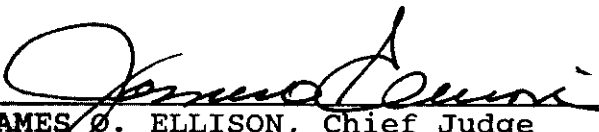
Bankruptcy Case No.
93-00087-W (Chapter 7)

Case No. 93-C-1112-E

ORDER OF DISMISSAL

The Stipulation of the Parties for Withdrawal of Motion to Withdraw the Reference and the Demand for Jury Trial with Prejudice is hereby affirmed by the Court. This matter is dismissed.

ORDERED this 12th day of July, 1994.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 7-12-94

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 11 1994

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

BARBARA DAVIS,

Plaintiff,

v.

BARBARA McCOY, et al.,

Defendants.

Case No. 92-C-042-E ✓

JUDGMENT

This action came before the court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

IT IS THEREFORE ORDERED that judgment is entered in favor of the defendant, Barbara McCoy, and against plaintiff, Barbara Davis.

Dated this 11th day of July, 1994.


JOHN LEO WAGNER

UNITED STATES MAGISTRATE JUDGE

S:Davis.jud

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 12 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

SHANNON SMITH,

Plaintiff,

vs.

WILLIAM ENGLERTH, et al

Defendants.

Case No. 93-C-47-B ✓

ENTERED ON DOCKET

DATE ~~JUL 1 3 1994~~

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel on 4-13-94 that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order for a period of 60 day and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

IT IS SO ORDERED this 12th day of July, 1994.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

62

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 12 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JEVAN BARRY FITZSIMMONS,
Plaintiff,

vs.

NEW MEDICO ASSOCIATES, INC.,
et al

Defendants.

Case No. 92-C-1077-B ✓

ENTERED ON DOCKET

DATE JUL 13 1994

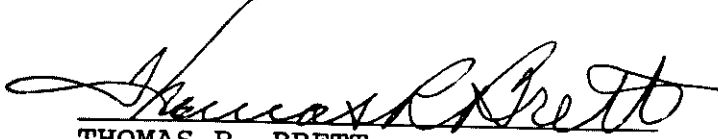
JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel on 5-16-94 that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction for a period of 60 days to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

IT IS SO ORDERED this 12th day of July, 1994.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 12 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

F.D.I.C.,

Plaintiff,

vs.

Case No. 91-C-679-B

C.L. MAYBERRY, et al,

Defendants.

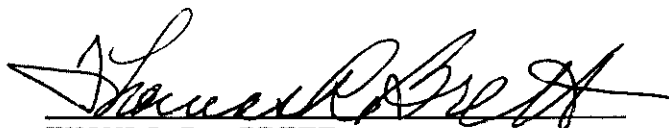
JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel on 4-29-94 that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction for a period of 60 days to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

IT IS SO ORDERED this 12th day of July, 1994.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE **JUL 12 1994**

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 11 1994

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

FEDERAL DEPOSIT INSURANCE
CORPORATION,

Plaintiff,

v.

Case No. 90-C-0079-CO

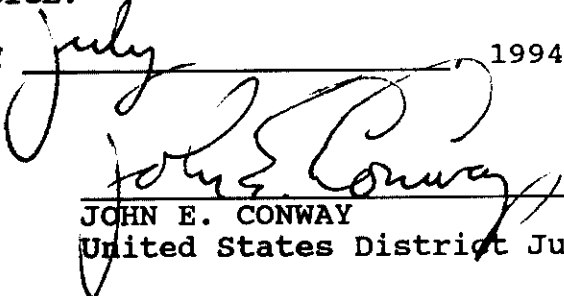
JAMES M. INHOFE, an individual

Defendant.

ORDER GRANTING MOTION TO DISMISS, FOR JUDGMENT ON THE
PLEADINGS OR FOR SUMMARY JUDGMENT

Upon consideration of James M. Inhofe's Motion to Dismiss, For Judgment On The Pleadings Or For Summary Judgment, and the FDIC's response thereto, The Court finds that FDIC's Complaint fails to state a cause of action, that there is no genuine issue of material fact, and that Mr. Inhofe is entitled to judgment as a matter of law. Such motion is therefore granted, and this action is therefore DISMISSED WITH PREJUDICE.

Dated this 5 day of July 1994.


JOHN E. CONWAY
United States District Judge

54

ENTERED ON DOCKET

DATE

7-12-94

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PAT JOHNSON,

Plaintiff,

vs.

ERNIE MILLER PONTIAC-GMC, INC.,
an Oklahoma Corporation,

Defendant and
Third-Party Plaintiff,

vs.

I-44 AUTO AUCTION, INC.,

Third-Party Defendant.

Case No. 93-C-662-B

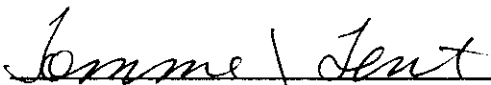
FILED

JUL 11 1994

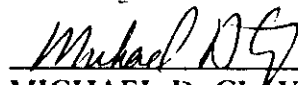
Richard M. Lowmeyer, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties stipulate that all claims of all parties are dismissed with prejudice, including Plaintiff's claims against Ernie Miller Pontiac-GMC, Inc., and I-44 Auto Auction, Inc., and all Third-Party claims.



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Community Legal Services
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Attorney for Pat Johnson



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THOMAS F. BIRMINGHAM OBA #811
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(918) 743-8355
Attorney for Ernie Miller Pontiac GMC

ENTERED ON DOCKET

DATE 7-12-94

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

IN RE: CREEK COUNTY WELL
SERVICES, INC.,
Debtor,

CREEK COUNTY WELL SERVICES,
INC.,
Plaintiff,

v.

EAST CENTRAL OKLAHOMA ELECTRIC
COOPERATIVE, INC.,

Defendant.)

No. 92-C-1147-E


JUL 11 1994
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

STIPULATION OF DISMISSAL

The parties, Creek County Well Service, Inc., and East Central Oklahoma Electric Cooperative, hereby stipulate to dismissal of this action with prejudice.

Respectfully submitted,

ATKINSON, HASKINS, NELLIS, BOUDREAUX,
HOLEMAN, PHIPPS & BRITTINGHAM


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Telephone: (918) 254-0626

Attorney for Defendant/Appellant

20\68\dism.dlb\MJB

DATE 7-11-94IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

JUL 8 1994

EDWIN C. TIEMANN and MAUDIE
JOYCE TIEMANN, husband and wife,

Plaintiffs,

vs.

Case No. 92 C 448 E

THE CITY OF TULSA; TUL-CENTER,
INC.; DOWNTOWN TULSA UNLIMITED;
and JAMES G. NORTON,

Defendants.

JUDGMENT

This matter having come on for trial on June 23, 1994, with Plaintiffs, Edwin C. Tiemann and Maudie Joyce Tiemann, present, pro se, and Defendants, Downtown Tulsa Unlimited, Tul-Center, Inc., and James G. Norton, being present in person and by their counsel, Truman B. Rucker of Richard D. Gibbon and Associates, and the Defendant, The City of Tulsa, be present by its counsel, Mark D. Swiney. All parties having announced ready for trial a jury of seven persons was chosen. Thereupon Plaintiff proceeded to examine witnesses, namely: Maudie Joyce Tiemann, and rested. Defendants' Motions to Dismiss Plaintiffs' claims were taken under advisement by the Court.

Defendants proceeded to call witnesses on their behalf, namely: Linda Baldwin, Jenkin Lloyd Jones, Jr., Frank Lowery, Linda Anson, Julie Shields and JAMES G. NORTON. All Defendants rested and the Court took under advisement their Motions for Directed Verdict. Instructions were given to the jury which returned a verdict on June 27, 1994, in favor of Defendants, Downtown Tulsa Unlimited, Tul-Center, Inc., JAMES G. NORTON, and The City of

Tulsa, and against Plaintiffs, Edwin C. Tiemann and Maudie Joyce Tiemann.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the verdict of the jury is received and judgment is hereby granted in favor of Defendants, Downtown Tulsa Unlimited, Tul-Center, Inc., JAMES G. NORTON and The City of Tulsa, and against Plaintiffs, Edwin C. Tiemann and Maudie Joyce Tiemann.

BY JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

Edwin C. Tiemann

Edwin C. Tiemann

Maudie Joyce Tiemann

Maudie Joyce Tiemann

Truman B. Rucker

Truman B. Rucker, Attorney for
Downtown Tulsa Unlimited,
Tul-Center, Inc. and James
G. Norton

Mark D. Swiney

Mark D. Swiney, Attorney for
The City of Tulsa